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Contents

Federal Register

Vol. 79, No. 89

Thursday, May 8, 2014

Reader Aids
Consult the Reader Aids section at the end of this page for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
985.....26359

14 CFR
71.....26365

24 CFR

Proposed Rules:
203.....26376

31 CFR
589.....26365

32 CFR

Proposed Rules:
197.....26381

33 CFR
100.....26373

Proposed Rules:
140.....26391
142.....26391
150.....26391

42 CFR

Proposed Rules:
405.....26538
418.....26538

46 CFR
1.....26374
10.....26374
11.....26374
12.....26374
13.....26374
14.....26374
15.....26374

Proposed Rules:
197.....26391

50 CFR
622.....26375

Proposed Rules:
17 (2 documents) 26392, 26504

Rules and Regulations

Federal Register
Vol. 79, No. 89
Thursday, May 8, 2014

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Doc. No. AMS–FV–13–0087; FV14–985–1 FR]

Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 2014–2015 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes the quantity of Far West Scotch and Native spearmint oil that handlers may purchase from, or handle on behalf of, producers during the 2014–2015 marketing year, which begins on June 1, 2014. The Far West includes Washington, Idaho, Oregon, and designated parts of Nevada and Utah. This rule establishes salable quantities and allotment percentages for Class 1 (Scotch) spearmint oil of 1,149,030 pounds and 55 percent, respectively, and for Class 3 (Native) spearmint oil of 1,090,821 pounds and 46 percent, respectively. The Spearmint Oil Administrative Committee (Committee), the entity responsible for local administration of the marketing order for spearmint oil produced in the Far West, recommended these quantities.

DATES: *Effective Date:* This final rule becomes effective June 1, 2014.

FOR FURTHER INFORMATION CONTACT: Manuel Michel, Marketing Specialist, or Gary Olson, Regional Director, Northwest Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (503) 326–2724, Fax: (503) 326–7440, or Email: *Manuel.Michel@ams.usda.gov* or *GaryD.Olson@ams.usda.gov*.

Small businesses may request information on complying with this regulation by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Jeffrey.Smutny@ams.usda.gov*.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 985 (7 CFR Part 985), as amended, regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah), hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 12866, 13563, and 13175.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This rule establishes the quantity of spearmint oil produced in the Far West, by class, that handlers may purchase from, or handle on behalf of, producers during the 2014–2015 marketing year, which begins on June 1, 2014.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The Committee meets annually in the fall to adopt a marketing policy for the ensuing marketing year or years. In determining such marketing policy, the Committee considers a number of factors, including, but not limited to, the current and projected supply, estimated future demand, production costs, and producer prices for all classes of spearmint oil. Input from spearmint oil handlers and producers regarding prospective marketing conditions for the upcoming year is considered as well. During the meeting, the Committee recommends to USDA any volume regulations deemed necessary to meet market requirements and to establish orderly marketing conditions for Far West spearmint oil. If the Committee's marketing policy considerations indicate a need for limiting the quantity of any or all classes of spearmint oil marketed, the Committee subsequently recommends the establishment of a salable quantity and allotment percentage for such class or classes of oil for the forthcoming marketing year.

The salable quantity represents the total amount of each class of spearmint oil that handlers may purchase from, or handle on behalf of, producers during the marketing year. The allotment percentage is calculated by dividing the salable quantity by the total allotment base for each applicable class of spearmint oil. The allotment percentage is used to determine each producer's annual allotment, which is their prorated share of the salable quantity. Allotment base is each producer's quantified share of the spearmint oil market based on a statistical representation of past spearmint oil production, with accommodation for reasonable and normal adjustments to such base as prescribed by the Committee and approved by USDA. Salable quantities are established at levels intended to meet market requirements and to establish orderly marketing conditions. Committee recommendations for volume controls are made well in advance of the period in which the regulations are to be effective, thereby allowing producers the chance to adjust their production decisions accordingly.

Pursuant to authority in §§ 985.50, 985.51, and 985.52 of the order, the full eight-member Committee met on November 6, 2013, and recommended salable quantities and allotment

percentages for both classes of oil for the 2014–2015 marketing year. The Committee unanimously recommended the establishment of a salable quantity and allotment percentage for Class 1 (Scotch) spearmint oil of 1,149,030 pounds and 55 percent, respectively. The Committee, also with a unanimous vote, recommended the establishment of a salable quantity and allotment percentage for Class 3 (Native) spearmint oil of 1,090,821 pounds and 46 percent, respectively.

This final rule establishes the amount of Scotch and Native spearmint oil that handlers may purchase from, or handle on behalf of, producers during the 2014–2015 marketing year, which begins on June 1, 2014. Salable quantities and allotment percentages have been placed into effect each season since the order's inception in 1980.

Class 1 (Scotch) Spearmint Oil

As noted above, the Committee unanimously recommended a salable quantity of Scotch spearmint oil of 1,149,030 pounds and an allotment percentage of 55 percent for the upcoming 2014–2015 marketing year. The Committee utilized 2014–2015 sales estimates for Scotch spearmint oil, as provided by several of the industry's handlers, as well as historical and current Scotch spearmint oil production and inventory statistics, to arrive at these recommendations.

Trade demand for Far West Scotch spearmint oil is expected to rise from 981,536 pounds in the 2013–2014 marketing year to 1,000,000 pounds in 2014–2015, if not more. Industry reports indicate an increasing consumer demand for mint-flavored products has resulted in increasing demand for Far West Scotch spearmint oil. Information gathered from spearmint oil handlers also supports this conclusion.

Production of Far West Scotch spearmint oil increased from 636,626 pounds in 2012 to 1,057,377 pounds in 2013. Committee members attribute the increase in production to both the low level of reserves and growing demand. Given that these factors are expected to continue in the coming 2014–2015 year, the Committee expects production to increase to as much as 1,300,000 pounds in that marketing year.

The Committee also estimates that there will be zero carry-in of Scotch spearmint oil on June 1, 2014, the beginning of the 2014–2015 marketing year. This figure, which is the primary measure of excess supply, down from an estimated 16,022 pounds the previous year, is below the minimum carry-in quantity that the Committee considers favorable. The demand during the 2012–2013 marketing year equaled total supply, resulting in the zero carry-in.

The 2014–2015 salable quantity of 1,149,030 pounds recommended by the Committee represents an increase of 75,631 pounds over the total supply available during the previous marketing year. Total supply for 2013–2014 amounted to 1,073,399 pounds (1,057,377 pounds produced plus 16,022 pounds held in reserve).

The Committee estimates 2014–2015 demand for Scotch spearmint oil at 1,000,000 pounds. When considered in conjunction with the forecast that there will be zero available carry-in of Scotch spearmint oil on June 1, 2014, the recommended salable quantity of 1,149,030 pounds would satisfy market demand and yield a carry-in of 149,030 pounds for the 2015–2016 marketing year.

The Committee's stated intent in the use of marketing order volume control regulations for Scotch spearmint oil is to keep adequate supplies available to meet market needs and establish orderly marketing conditions. While the salable quantity recommended for the upcoming marketing year is less than the salable quantity set for the previous year (2013–2014 at 1,344,500 pounds), the Committee felt that the recommended limit would adequately meet demand, as well as result in carry-in for the following year. With that in mind, the Committee developed its recommendation of the Scotch spearmint oil salable quantity and allotment percentage for the 2014–2015 marketing year based on the information discussed above, as well as the data outlined below.

(A) *Estimated carry-in of Scotch spearmint oil on June 1, 2014—0 pounds.* This figure is the difference between the revised 2013–2014 marketing year total available supply of 1,073,399 pounds and the estimated 2013–2014 marketing year trade demand of 1,073,399 pounds.

(B) *Estimated trade demand of Scotch spearmint oil for the 2014–2015 marketing year—1,000,000 pounds.* This figure is based on input from producers at five Scotch spearmint oil production area meetings held in late September and early October 2013, as well as estimates provided by handlers and other meeting participants at the November 6, 2013, meeting. The average estimated trade demand provided at the five production area meetings was 1,033,000 pounds, which is 25,750 pounds less than the average of trade demand estimates submitted by handlers. However, Far West Scotch spearmint oil sales have averaged 819,824 pounds per year over the last five years. Given this information, the Committee decided it was prudent to anticipate the trade demand at 1,000,000 pounds. Should the initially established volume control levels prove insufficient to adequately supply the market, the Committee has the authority to recommend intra-seasonal increases as needed.

(C) *Salable quantity of Scotch spearmint oil required from the 2014–2015 marketing year production—1,000,000 pounds.* This figure is the difference between the estimated 2014–2015 marketing year trade demand (1,000,000 pounds) and the estimated carry-in on June 1, 2014 (0 pounds). This figure represents the minimum salable quantity that may be needed to satisfy estimated demand for the coming year with no carryover.

(D) *Total estimated allotment base of Scotch spearmint oil for the 2014–2015 marketing year—2,089,146 pounds.* This figure represents a one-percent increase over the revised 2013–2014 total allotment base. This figure is generally revised each year on June 1 due to producer base being lost as a result of the bona fide effort production provisions of § 985.53(e). The revision is usually minimal.

(E) *Computed Scotch spearmint oil 2014–2015 marketing year allotment percentage—47.9 percent.* This percentage is computed by dividing the minimum required salable quantity (1,000,000 pounds) by the total estimated allotment base (2,089,146 pounds).

(F) *Recommended Scotch spearmint oil 2014–2015 marketing year allotment percentage—55 percent.* This is the Committee's recommendation and is based on the computed allotment percentage (47.9 percent), the average of the computed allotment percentage figures from the five production area meetings (46.2 percent), and input from producers and handlers at the November 6, 2013, meeting. The recommended allotment percentage of 55 percent is also based on the Committee's determination that the computed percentage (47.9 percent) may not adequately supply the potential 2014–2015 Scotch spearmint oil market.

(G) *Recommended Scotch spearmint oil 2014–2015 marketing year salable quantity—1,149,030 pounds.* This figure is the product of the recommended allotment percentage (55 percent) and the total estimated allotment base (2,089,146 pounds).

(H) *Estimated total available supply of Scotch spearmint oil for the 2014–2015 marketing year—1,149,030 pounds.* This figure is the sum of the 2014–2015 recommended salable

quantity (1,149,030 pounds) and the estimated carry-in on June 1, 2014 (0 pounds).

Class 3 (Native) Spearmint Oil

At the November 6, 2013, meeting, the Committee also recommended a 2014–2015 Native spearmint oil salable quantity of 1,090,821 pounds and an allotment percentage of 46 percent. The Committee utilized Native spearmint oil sales estimates for 2014–2015 marketing year, as provided by several of the industry's handlers, as well as historical and current Native spearmint oil market statistics to establish these thresholds. These volume control levels represent a decrease of 341,380 pounds and 15 percentage points over the previous year's initial salable quantity and allotment percentage. Should these levels prove insufficient to adequately supply the market, the Committee has the authority to recommend an intra-seasonal increase, as it has done in the past two marketing periods, if demand rises beyond expectations.

The Committee also estimates that there will be 461,260 pounds reserve of Native spearmint oil on June 1, 2014. This figure, which is the oil held in reserve by producers, is down from an industry peak of 606,942 pounds in 2011. Reserve levels of Native spearmint oil are nearing the level that the Committee believes is optimal for the industry.

Committee statistics indicate that demand for Far West Native spearmint oil has been gradually increasing since 2009. Spearmint oil handlers, who previously projected the 2013–2014 trade demand for Far West Native spearmint oil to be in the range of 1,100,000 pounds to 1,400,000 pounds (with an average of 1,300,000 pounds), have projected trade demand for the 2014–2015 marketing period to be in the range of 1,290,000 pounds to 1,400,000 pounds (with an average of 1,347,500).

Given the above, the Committee estimates that approximately 1,300,000 pounds of Native spearmint oil may be sold during the 2014–2015 marketing year. When considered in conjunction with the estimated carry-in of 307,297 pounds of Native spearmint oil on June 1, 2014, the recommended salable quantity of 1,090,821 pounds results in an estimated total available supply of 1,398,118 pounds of Native spearmint oil during the 2014–2015 marketing year. The Committee also estimates that carry-in of Native spearmint oil at the beginning of the 2015–2016 marketing year will be approximately 98,118 pounds. Carry-in spearmint oil is distinct from reserve pool spearmint oil and represents the amount of salable spearmint oil produced, but not marketed, in previous years and is available for sale in the current year. It is the primary measure of excess spearmint oil supply under the order. Reserve pool oil represents the amount of excess oil held by the Committee, on behalf of the producers, that is not currently available to the market.

The Committee's stated intent in the use of marketing order volume control regulations for Native spearmint oil is to keep adequate supplies available to meet market needs and establish orderly marketing conditions. With that in mind, the Committee developed its recommendation of the Native spearmint oil salable quantity and allotment percentage for the 2014–2015 marketing year based on the information discussed above, as well as the data outlined below.

(A) *Estimated carry-in of Native spearmint oil on June 1, 2014—307,297 pounds.* This figure is the difference between the revised 2013–2014 marketing year total available supply of 1,577,297 pounds and the estimated 2013–2014 marketing year trade demand of 1,270,000 pounds.

(B) *Estimated trade demand of Native spearmint oil for the 2014–2015 marketing year—1,300,000 pounds.* This estimate is established by the Committee and is based on input from producers at six Native spearmint oil production area meetings held in late September and early October 2013, as well as estimates provided by handlers and other meeting participants at the November 6, 2013, meeting. The average estimated trade demand provided at the six production area meetings was 1,271,281 pounds, whereas the handlers' estimates ranged from 1,290,000 pounds to 1,400,000 pounds, and averaged 1,347,500 pounds. The average of Far West Native spearmint oil sales over the last five years is 1,190,928 pounds. Should the initially established volume control levels prove insufficient to adequately supply the market, the Committee has the authority to recommend intra-seasonal increases as needed.

(C) *Salable quantity of Native spearmint oil required from the 2014–2015 marketing year production—992,703 pounds.* This figure is the difference between the estimated 2014–2015 marketing year trade demand (1,300,000 pounds) and the estimated carry-in on June 1, 2014 (307,297 pounds). This is the minimum amount that the Committee believes is required to meet the anticipated 2014–2015 Native spearmint oil trade demand.

(D) *Total estimated allotment base of Native spearmint oil for the 2014–2015 marketing year—2,371,350 pounds.* This figure represents a one-percent increase over the revised 2013–2014 total allotment base. This figure is generally revised each year on June 1 due to producer base being lost as a result of the bona fide effort production provisions of § 985.53(e). The revision is usually minimal.

(E) *Computed Native spearmint oil 2014–2015 marketing year allotment percentage—41.9 percent.* This percentage is computed by dividing the required salable quantity (992,703 pounds) by the total estimated allotment base (2,371,350 pounds).

(F) *Recommended Native spearmint oil 2014–2015 marketing year allotment percentage—46 percent.* This is the Committee's recommendation based on the computed allotment percentage (41.9 percent), the average of the computed allotment percentage figures from the six production area meetings (39.9 percent), and input from producers and handlers at the November 6, 2013, meeting. The recommended allotment percentage of 46 percent is also based on the Committee's determination that the computed percentage (41.9 percent) may not adequately supply the potential 2014–2015 Native spearmint oil market.

(G) *Recommended Native spearmint oil 2014–2015 marketing year salable quantity—1,090,821 pounds.* This figure is the product of the recommended allotment percentage (46 percent) and the total estimated allotment base (2,371,350 pounds).

(H) *Estimated available supply of Native spearmint oil for the 2014–2015 marketing year—1,398,118 pounds.* This figure is the sum of the 2014–2015 recommended salable quantity (1,090,821 pounds) and the estimated carry-in on June 1, 2014 (307,297 pounds).

The salable quantity is the total quantity of each class of spearmint oil that handlers may purchase from, or handle on behalf of, producers during a marketing year. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's allotment base for the applicable class of spearmint oil.

The Scotch and Native spearmint oil salable quantities and allotment percentages of 1,149,030 pounds and 55 percent, and 1,090,821 pounds and 46 percent, respectively, are based on the goal of establishing and maintaining market stability. The Committee anticipates that this goal will be achieved by matching the available supply of each class of Spearmint oil to the estimated demand of such, thus

avoiding extreme fluctuations in inventories and prices.

The salable quantities are not expected to cause a shortage of spearmint oil supplies. Any unanticipated or additional market demand for spearmint oil which may develop during the marketing year could be satisfied by an intra-seasonal increase in the salable quantity. The order contains a provision for intra-seasonal increases to allow the Committee the flexibility to respond quickly to changing market conditions.

Under volume regulation, producers who produce more than their annual allotments during the 2014–2015 marketing year may transfer such excess spearmint oil to producers who have produced less than their annual allotment. In addition, up until November 1, 2014, producers may place excess spearmint oil production into the reserve pool to be released in the future in accordance with market needs.

This regulation is similar to regulations issued in prior seasons. The average initial allotment percentage for the five most recent marketing years for Scotch spearmint oil is 41.4 percent, while the average initial allotment percentage for the same five-year period for Native spearmint oil is 50.2 percent. Costs to producers and handlers resulting from this rule are expected to be offset by the benefits derived from a stable market and improved returns. In conjunction with the issuance of this final rule, USDA has reviewed the Committee's marketing policy statement for the 2014–2015 marketing year. The Committee's marketing policy statement, a requirement whenever the Committee recommends volume regulation, fully meets the intent of § 985.50 of the order.

During its discussion of potential 2014–2015 salable quantities and allotment percentages, the Committee considered: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) the prospective production of each class of oil; (4) the total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Conformity with USDA's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' has also been reviewed and confirmed.

The salable quantities and allotment percentages established by this final rule allow the anticipated market needs to be fulfilled. In determining anticipated market needs, the Committee considered historical sales, as well as changes and trends in production and demand. This rule also provides producers with information on the amount of spearmint oil that should be produced for the 2014–2015 season in order to meet anticipated market demand.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are eight spearmint oil handlers subject to regulation under the order, and approximately 39 producers of Scotch spearmint oil and approximately 91 producers of Native spearmint oil in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000 (13 CFR 121.201).

Based on the SBA's definition of small entities, the Committee estimates that two of the eight handlers regulated by the order could be considered small entities. Most of the handlers are large corporations involved in the international trading of essential oils and the products of essential oils. In addition, the Committee estimates that 22 of the 39 Scotch spearmint oil producers, and 29 of the 91 Native spearmint oil producers could be classified as small entities under the SBA definition. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity and whose income from farming operations is not exclusively dependent on the production of spearmint oil. A typical spearmint oil-producing operation has enough acreage for rotation such that the total acreage required to produce the crop is about one-third spearmint and two-thirds rotational crops. Thus, the typical spearmint oil producer has to have considerably more acreage than is planted to spearmint during any given season. Crop rotation is an essential cultural practice in the production of spearmint oil for purposes of weed, insect, and disease control. To remain economically viable with the added costs associated with spearmint oil production, a majority of spearmint oil-producing farms fall into the SBA category of large businesses.

Small spearmint oil producers generally are not as extensively diversified as larger ones and as such are more at risk from market fluctuations. Such small producers generally need to market their entire annual allotment and do not have income from other crops to cushion seasons with poor spearmint oil returns. Conversely, large diversified producers have the potential to endure one or more seasons of poor spearmint oil markets because income from alternate crops could support the operation for a period of time. Being reasonably assured of a stable price and market provides small producing entities with the ability to maintain proper cash flow and to meet annual expenses. Thus, the market and price stability provided by the order potentially benefit small producers more than such provisions benefit large producers. Even though a majority of handlers and producers of spearmint oil may not be classified as small entities, the volume control feature of this order has small entity orientation.

This final rule establishes the quantity of spearmint oil produced in the Far West, by class, that handlers may purchase from, or handle on behalf of, producers during the 2014–2015 marketing year. The Committee recommended this action to help maintain stability in the spearmint oil market by matching supply to estimated demand, thereby avoiding extreme fluctuations in supplies and prices. Establishing quantities that may be purchased or handled during the marketing year through volume regulations allows producers to plan their spearmint planting and harvesting to meet expected market needs. The provisions of §§ 985.50, 985.51, and 985.52 of the order authorize this rule.

Instability in the spearmint oil sub-sector of the mint industry is much more likely to originate on the supply side than the demand side. Fluctuations

in yield and acreage planted from season-to-season tend to be larger than fluctuations in the amount purchased by handlers. Notwithstanding the recent global recession and the overall negative impact on demand for consumer goods that utilize spearmint oil, demand for spearmint oil tends to change slowly from year to year.

Demand for spearmint oil at the farm level is derived from retail demand for spearmint-flavored products such as chewing gum, toothpaste, and mouthwash. The manufacturers of these products are by far the largest users of spearmint oil. However, spearmint flavoring is generally a very minor component of the products in which it is used, so changes in the raw product price have virtually no impact on retail prices for those goods.

Spearmint oil production tends to be cyclical. Years of relatively high production, with demand remaining reasonably stable, have led to periods in which large producer stocks of unsold spearmint oil have depressed producer prices for a number of years. Shortages and high prices may follow in subsequent years, as producers respond to price signals by cutting back production.

The significant variability of the spearmint oil market is illustrated by the fact that the coefficient of variation (a standard measure of variability; ''CV'') of Far West spearmint oil grower prices for the period 1980–2012 (when the marketing order was in effect) is 0.19, compared to 0.34 for the decade prior to the promulgation of the order (1970–79) and 0.48 for the prior 20-year period (1960–79). This provides an indication of the price stabilizing impact of the marketing order.

Production in the shortest marketing year was about 47 percent of the 34-year average (1.92 million pounds from 1980 through 2013) and the largest crop was approximately 160 percent of the 34-year average. A key consequence is that, in years of oversupply and low prices, the season average producer price of spearmint oil is below the average cost of production (as measured by the Washington State University Cooperative Extension Service).

The wide fluctuations in supply and prices that result from this cycle, which was even more pronounced before the creation of the order, can create liquidity problems for some producers. The order was designed to reduce the price impacts of the cyclical swings in production. However, producers have been less able to weather these cycles in recent years because of the increase in production costs. While prices have been relatively steady, the cost of production has increased to the extent that plans to plant spearmint may be postponed or changed indefinitely. Producers are also enticed by the prices of alternative crops and their lower cost of production.

In an effort to stabilize prices, the spearmint oil industry uses the volume control mechanisms authorized under the order. This authority allows the Committee to recommend a salable quantity and allotment percentage for each class of oil for the upcoming marketing year. The salable quantity for each class of oil is the total volume of oil that producers may sell during the marketing year. The allotment percentage for each class of spearmint oil is derived by dividing the salable quantity by the total allotment base.

Each producer is then issued an annual allotment certificate, in pounds, for the applicable class of oil, which is calculated by multiplying the producer's allotment base by the applicable allotment percentage. This is the amount of oil of each applicable class that the producer can sell.

By November 1 of each year, the Committee identifies any oil that individual producers have produced above the volume specified on their annual allotment certificates. This excess oil is placed in a reserve pool administered by the Committee.

There is a reserve pool for each class of oil that may not be sold during the current marketing year unless USDA approves a Committee recommendation to increase the salable quantity and allotment percentage for a class of oil and make a portion of the pool available. However, limited quantities of reserve oil are typically sold by one producer to another producer to fill deficiencies. A deficiency occurs when on-farm production is less than a producer's allotment. In that case, a producer's own reserve oil can be sold to fill that deficiency. Excess production (higher than the producer's allotment) can be sold to fill other producers' deficiencies. All of these provisions need to be exercised prior to November 1 of each year.

In any given year, the total available supply of spearmint oil is composed of current production plus carryover stocks from the previous crop. The Committee seeks to maintain market stability by balancing supply and demand, and to close the marketing year with an appropriate level of salable spearmint oil to carry over into the subsequent marketing year. If the industry has production in excess of the salable quantity, then the reserve pool absorbs the surplus quantity of spearmint oil, which goes unsold during that year, unless the oil is needed for unanticipated sales.

Under its provisions, the order may attempt to stabilize prices by (1) limiting supply and establishing reserves in high production years, thus minimizing the price-depressing effect that excess producer stocks have on unsold spearmint oil, and (2) ensuring that stocks are available in short supply years when prices would otherwise increase dramatically. The reserve pool stocks, which are increased in large production years, are drawn down in years where the crop is short.

An econometric model was used to assess the impact that volume control has on the prices producers receive for their commodity. Without volume control, spearmint oil markets would likely be over-supplied. This could result in low producer prices and a large volume of oil stored and carried over to the next crop year. The model estimates how much lower producer prices would likely be in the absence of volume controls.

The Committee estimated trade demand for the 2014–2015 marketing year for both classes of oil at 2,300,000 pounds and that the expected combined salable carry-in on June 1, 2014, will be 307,297 pounds. This results in a combined required salable quantity of 1,992,703 pounds. With volume control, sales by producers for the 2014–2015 marketing year would be limited to 2,239,851 pounds (the salable quantity for both classes of spearmint oil).

The allotment percentages, upon which 2014–2015 producer allotments are based, are 55 percent for Scotch and 46 percent for Native. Without volume controls, producers would not be limited to these allotment levels, and could produce and sell additional spearmint. The econometric model estimated a decline of about $1.90 in the season average producer price per pound (from both classes of spearmint oil) resulting from the higher quantities that would be produced and marketed without volume control. The surplus situation for the spearmint oil market that would exist without volume controls in 2014–2015 also would likely dampen prospects for improved producer prices in future years because of the buildup in stocks.

The use of volume control allows the industry to fully supply spearmint oil markets while avoiding the negative consequences of over-supplying these markets. The use of volume control is believed to have little or no effect on consumer prices of products containing spearmint oil and will not result in fewer retail sales of such products.

The Committee discussed alternatives to the recommendations contained in this rule for both classes of spearmint oil. The Committee discussed and rejected the idea of recommending that there not be any volume regulation for both classes of spearmint oil because of the severe price-depressing effects that may occur without volume control.

After computing the initial 47.9 percent Scotch spearmint oil allotment percentage, the Committee considered various alternative levels of volume control for Scotch spearmint oil. Even with the moderately optimistic marketing conditions, there was consensus from the Committee that the Scotch spearmint oil allotment percentage for 2014–2015 should be less than the percentage established for the 2013–2014 marketing year (65 percent). After considerable discussion, the eight-member committee unanimously determined that 1,149,030 pounds and 55 percent would be the most effective Scotch spearmint oil salable quantity and allotment percentage, respectively, for the 2014–2015 marketing year.

The Committee was also able to reach a consensus regarding the level of volume control for Native spearmint oil. After first determining the computed allotment percentage at 41.9 percent, the Committee unanimously recommended 1,090,821 pounds and 46 percent for the effective Native spearmint oil salable quantity and allotment percentage, respectively, for the 2014–2015 marketing year.

As noted earlier, the Committee's recommendation to establish salable quantities and allotment percentages for both classes of spearmint oil was made after careful consideration of all available information including: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) the prospective production of each class of oil; (4) the total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Based on its review, the Committee determined that the salable quantity and allotment percentage levels recommended will achieve the objectives sought.

Without any regulations in effect, the Committee believes the industry could return to the pronounced cyclical price patterns that occurred prior to the order and that prices in 2014–2015 could decline substantially below current levels.

According to the Committee, the recommended salable quantities and allotment percentages are expected to facilitate the goal of establishing orderly marketing conditions for Far West spearmint oil.

As previously stated, annual salable quantities and allotment percentages have been issued for both classes of spearmint oil since the order's inception.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0178, Vegetable and Specialty Crops. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This final rule establishes the salable quantities and allotment percentages for Class 1 (Scotch) spearmint oil and Class 3 (Native) spearmint oil produced in the Far West during the 2014–2015 marketing year. Accordingly, this final rule will not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil producers or handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this final rule.

AMS is committed to complying with the E-Government Act to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

In addition, the Committee's meeting was widely publicized throughout the spearmint oil industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the November 6, 2013, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on March 14, 2014 (79 FR 14441). A copy of the rule was provided to Committee staff, who in turn made it available to all Far West spearmint oil producers, handlers, and interested persons. Finally, the rule was made available through the Internet by USDA and the Office of the Federal Register. A 15-day comment period ending March 31, 2014, was provided to allow interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Jeffrey Smutny at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the 2014–2015 marketing year starts on June 1, 2014, and handlers will need to begin purchasing the spearmint oil allotted under this rulemaking. Further, handlers are aware of this rule, which was recommended at a public meeting. Finally, a 15-day comment period was provided for in the proposed rule.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR Part 985 is amended as follows:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

■ 1. The authority citation for 7 CFR Part 985 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. A new § 985.233 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 985.233 Salable quantities and allotment percentages—2014–2015 marketing year.

The salable quantity and allotment percentage for each class of spearmint

oil during the marketing year beginning on June 1, 2014, shall be as follows:

(a) Class 1 (Scotch) oil—a salable quantity of 1,149,030 pounds and an allotment percentage of 55 percent.

(b) Class 3 (Native) oil—a salable quantity of 1,090,821 pounds and an allotment percentage of 46 percent.

Dated: May 1, 2014.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2014–10371 Filed 5–7–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0954; Airspace Docket No. 13–AGL–35]

Amendment of Class D Airspace; St. Paul, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, correction.

SUMMARY: This action amends a typographical error in the geographic coordinates of South St. Paul Municipal Airport-Richard E. Fleming Field in a final rule technical amendment published in the **Federal Register** of March 4, 2014, that amends Class D airspace in the St. Paul, MN, area.

DATES: *Effective date:* 0901 UTC, May 29, 2014. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone 817–321–7716.

SUPPLEMENTARY INFORMATION:

History

On March 4, 2014, a final rule technical amendment was published in the **Federal Register** amending Class D airspace in St. Paul, MN (79 FR 12050, Docket No. FAA–2013–0954). Subsequent to publication, the FAA found a typographical error in the geographic coordinates for South St. Paul Municipal Airport-Richard E. Fleming Field. This action corrects that error.

Final Rule Correction

Accordingly, pursuant to the authority delegated to me, in the **Federal Register** of March 4, 2014 (79 FR 12050) FR Doc. 2014–04447, the geographic coordinates in the regulatory text on page 12051, column 2, line 9, is corrected as follows:

§ 71.1 [Amended]

AGL MN D St. Paul, MN [Corrected]

Remove (Lat. 44°51″2605′ N.,) and add in its place (Lat. 44°51′26″ N., 93°01′58″ W.)

Issued in Fort Worth, Texas, on April 11, 2014.

Kent M. Wheeler,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2014–09881 Filed 5–7–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 589

Ukraine-Related Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (''OFAC'') is issuing regulations to implement Executive Order 13660 of March 6, 2014 (''Blocking Property of Certain Persons Contributing to the Situation in Ukraine''), Executive Order 13661 of March 17, 2014 (''Blocking Property of Additional Persons Contributing to the Situation in Ukraine''), and Executive Order 13662 of March 20, 2014 (''Blocking Property of Additional Persons Contributing to the Situation in Ukraine''). OFAC intends to supplement this part 589 with a more comprehensive set of regulations, which may include additional interpretive and definitional guidance and additional general licenses and statements of licensing policy.

DATES: *Effective:* May 8, 2014.

FOR FURTHER INFORMATION CONTACT: Assistant Director for Licensing, tel.: 202/622–2480, Assistant Director for Policy, tel.: 202/622–6746, Assistant Director for Regulatory Affairs, tel.: 202/622–4855, Assistant Director for Sanctions Compliance & Evaluation, tel.: 202/622–2490, OFAC, or Chief Counsel (Foreign Assets Control), tel.: 202/622–2410, Office of the General Counsel, Department of the Treasury (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treasury.gov/ofac*). Certain general information pertaining to OFAC's sanctions programs also is available via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

Background

On March 6, 2014, the President issued Executive Order 13660 (79 FR 13493, March 10, 2014) (''E.O. 13660''), invoking the authority of, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (''IEEPA'') and the National Emergencies Act (50 U.S.C. 1601 *et seq.*) (''NEA''). On March 17, 2014, the President issued Executive Order 13661 (79 FR 15535, March 16, 2014) (''E.O. 13661''), invoking the authority of, *inter alia,* IEEPA and the NEA, to expand the scope of the national emergency declared in E.O. 13660 of March 6, 2014. On March 20, 2014, the President issued Executive Order 13662 (79 FR 16169, March 24, 2014) (''E.O. 13662''), invoking the authority of, *inter alia,* IEEPA and the NEA, to expand the scope of the national emergency declared in E.O. 13660 and expanded in scope in E.O. 13661.

The Department of the Treasury's Office of Foreign Assets Control (''OFAC'') is issuing the Ukraine-Related Sanctions Regulations, 31 CFR part 589 (the ''Regulations''), to implement E.O. 13660, E.O. 13661, and E.O. 13662, pursuant to authorities delegated to the Secretary of the Treasury in those orders. A copy of E.O. 13660 appears in Appendix A, a copy of E.O. 13661 appears in Appendix B, and a copy of E.O. 13662 appears in Appendix C to this part.

The Regulations are being published in abbreviated form at this time for the purpose of providing immediate guidance to the public. OFAC intends to supplement this part 589 with a more comprehensive set of regulations, which may include additional interpretive and definitional guidance and additional general licenses and statements of licensing policy. The appendixes to the Regulations will be removed when OFAC supplements this part with a more comprehensive set of regulations.

Public Participation

Because the Regulations involve a foreign affairs function, the provisions of Executive Order 12866 of September 30, 1993, and the Administrative Procedure Act (5 U.S.C. 553) requiring

notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

The collections of information related to the Regulations are contained in 31 CFR Part 501 (the ''Reporting, Procedures and Penalties Regulations''). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget under control number 1505–0164. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

List of Subjects in 31 CFR Part 589

Administrative practice and procedure, Banking, Banks, Blocking of assets, Brokers, Credit, Foreign trade, Investments, Loans, Russian Federation, Securities, Services, Ukraine.

■ For the reasons set forth in the preamble, the Department of the Treasury's Office of Foreign Assets Control adds part 589 to 31 CFR chapter V to read as follows:

PART 589—UKRAINE RELATED SANCTIONS REGULATIONS

Subpart A—Relation of This Part to Other Laws and Regulations

Sec.

Subpart B—Prohibitions

Subpart C—General Definitions

Subpart D—Interpretations § 589.401 [Reserved]

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

Subpart F—[Reserved]

Subpart G—[Reserved]

Subpart H—Procedures

Subpart I—Paperwork Reduction Act

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011 (50 U.S.C. 1705 note); E.O. 13660, 79 FR 13493, March 10, 2014; E.O. 13661, 79 FR 15535 March 19, 2014, E.O. 13662, 79 FR 16169, March 24, 2014.

Subpart A—Relation of This Part to Other Laws and Regulations

§ 589.101 Relation of this part to other laws and regulations.

This part is separate from, and independent of, the other parts of this chapter, with the exception of part 501 of this chapter, the recordkeeping and reporting requirements and license application and other procedures of which apply to this part. Actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part. Differing foreign policy and national security circumstances may result in differing interpretations of similar language among the parts of this chapter. No license or authorization contained in or issued pursuant to those other parts authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to any other provision of law or regulation authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations.

Note to § 589.101: This part has been published in abbreviated form for the purpose of providing immediate guidance to the public. OFAC intends to supplement this part with a more comprehensive set of regulations, which may include additional interpretive and definitional guidance and additional general licenses and statements of licensing policy.

Subpart B—Prohibitions

§ 589.201 Prohibited transactions.

All transactions prohibited pursuant to Executive Order 13660 of March 6, 2014, Executive Order 13661 of March 16, 2014, and Executive Order 13662 of March 20, 2014 (''Ukraine-Related Executive Orders''), are also prohibited pursuant to this part.

Note 1 to § 589.201: The names of persons designated pursuant to the Ukraine-Related Executive Orders, whose property and interests in property therefore are blocked pursuant to this section, are published in the **Federal Register** and incorporated into OFAC's Specially Designated Nationals and Blocked Persons List (''SDN List'') and appear with the prefix ''UKRAINE'' in the program tag associated with each listing. The SDN List is accessible through the following page on OFAC's Web site: *www.treasury.gov/sdn.* Additional information pertaining to the SDN List can be found in Appendix A to this chapter. *See* § 589.406 concerning entities that may not be listed on the SDN List but whose property and interests in property are nevertheless blocked pursuant to this section.

Note 2 to § 589.201: The International Emergency Economic Powers Act (50 U.S.C. 1701–1706), in Section 203 (50 U.S.C. 1702), authorizes the blocking of property and interests in property of a person during the pendency of an investigation. The names of persons whose property and interests in property are blocked pending investigation pursuant to this section also are published in the **Federal Register** and incorporated into the SDN List with the prefix ''BPI—UKRAINE.''

Note 3 to § 589.201: Sections 501.806 and 501.807 of this chapter describe the procedures to be followed by persons seeking, respectively, the unblocking of funds that they believe were blocked due to mistaken identity, or administrative reconsideration of their status as persons whose property and interests in property are blocked pursuant to this section.

§ 589.202 Effect of transfers violating the provisions of this part.

(a) Any transfer after the effective date that is in violation of any provision of this part or of any regulation, order, directive, ruling, instruction, or license issued pursuant to this part, and that involves any property or interest in property blocked pursuant to § 589.201, is null and void and shall not be the basis for the assertion or recognition of any interest in or right, remedy, power, or privilege with respect to such property or property interests.

(b) No transfer before the effective date shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or any interest in, any property or interest in property blocked pursuant to § 589.201, unless the person who holds or maintains such property, prior to that date, had written notice of the transfer or by any written evidence had recognized such transfer.

(c) Unless otherwise provided, a license or other authorization issued by OFAC before, during, or after a transfer shall validate such transfer or make it enforceable to the same extent that it would be valid or enforceable but for the provisions of this part and any regulation, order, directive, ruling, instruction, or license issued pursuant to this part.

(d) Transfers of property that otherwise would be null and void or unenforceable by virtue of the provisions of this section shall not be deemed to be null and void or unenforceable as to any person with whom such property is or was held or maintained (and as to such person only) in cases in which such person is able to establish to the satisfaction of OFAC each of the following:

(1) Such transfer did not represent a willful violation of the provisions of this part by the person with whom such property is or was held or maintained (and as to such person only);

(2) The person with whom such property is or was held or maintained did not have reasonable cause to know or suspect, in view of all the facts and circumstances known or available to such person, that such transfer required a license or authorization issued pursuant to this part and was not so licensed or authorized, or, if a license or authorization did purport to cover the transfer, that such license or authorization had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained; and

(3) The person with whom such property is or was held or maintained filed with OFAC a report setting forth in full the circumstances relating to such transfer promptly upon discovery that:

(i) Such transfer was in violation of the provisions of this part or any regulation, ruling, instruction, license, or other directive or authorization issued pursuant to this part;

(ii) Such transfer was not licensed or authorized by OFAC; or

(iii) If a license did purport to cover the transfer, such license had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained.

Note to paragraph (d) of § 589.202: The filing of a report in accordance with the provisions of paragraph (d)(3) of this section shall not be deemed evidence that the terms of paragraphs (d)(1) and (d)(2) of this section have been satisfied.

(e) Unless licensed pursuant to this part, any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is null and void with respect to any property in which, on or since the effective date, there existed an interest of a person whose property and interests in property are blocked pursuant to § 589.201.

§ 589.203 Holding of funds in interest-bearing accounts; investment and reinvestment.

(a) Except as provided in paragraphs (e) or (f) of this section, or as otherwise directed by OFAC, any U.S. person holding funds, such as currency, bank deposits, or liquidated financial obligations, subject to § 589.201 shall hold or place such funds in a blocked interest-bearing account located in the United States.

(b)(1) For purposes of this section, the term *blocked interest-bearing account* means a blocked account:

(i) In a federally-insured U.S. bank, thrift institution, or credit union, provided the funds are earning interest at rates that are commercially reasonable; or

(ii) With a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), provided the funds are invested in a money market fund or in U.S. Treasury bills.

(2) Funds held or placed in a blocked account pursuant to paragraph (a) of this section may not be invested in instruments the maturity of which exceeds 180 days.

(c) For purposes of this section, a rate is commercially reasonable if it is the rate currently offered to other depositors on deposits or instruments of comparable size and maturity.

(d) For purposes of this section, if interest is credited to a separate blocked account or subaccount, the name of the account party on each account must be the same.

(e) Blocked funds held in instruments the maturity of which exceeds 180 days at the time the funds become subject to § 589.201 may continue to be held until maturity in the original instrument, provided any interest, earnings, or other proceeds derived therefrom are paid into a blocked interest-bearing account in accordance with paragraphs (a) or (f) of this section.

(f) Blocked funds held in accounts or instruments outside the United States at the time the funds become subject to § 589.201 may continue to be held in the same type of accounts or instruments, provided the funds earn interest at rates that are commercially reasonable.

(g) This section does not create an affirmative obligation for the holder of blocked tangible property, such as chattels or real estate, or of other blocked property, such as debt or equity securities, to sell or liquidate such property. However, OFAC may issue licenses permitting or directing such sales or liquidation in appropriate cases.

(h) Funds subject to this section may not be held, invested, or reinvested in a manner that provides immediate financial or economic benefit or access to any person whose property and interests in property are blocked pursuant to § 589.201, nor may their holder cooperate in or facilitate the pledging or other attempted use as collateral of blocked funds or other assets.

§ 589.204 Expenses of maintaining blocked property; liquidation of blocked property.

(a) Except as otherwise authorized, and notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or contract entered into or any license or permit granted prior to the effective date, all expenses incident to the maintenance of physical property blocked pursuant to § 589.201 shall be the responsibility of the owners or operators of such property, which expenses shall not be met from blocked funds.

(b) Property blocked pursuant to § 589.201 may, in the discretion of OFAC, be sold or liquidated and the net proceeds placed in a blocked interest-bearing account in the name of the owner of the property.

Subpart C—General Definitions

§ 589.300 Applicability of definitions.

The definitions in this subpart apply throughout the entire part.

§ 589.301 Blocked account; blocked property.

The terms *blocked account* and *blocked property* shall mean any account or property subject to the prohibitions in § 589.201 held in the name of a person whose property and interests in property are blocked pursuant to § 589.201, or in which such person has an interest, and with respect to which payments, transfers, exportations, withdrawals, or other dealings may not be made or effected except pursuant to an authorization or license from OFAC expressly authorizing such action.

Note to § 589.301: See § 589.406 concerning the blocked status of property and interests in property of an entity that is 50 percent or more owned by a person whose property and interests in property are blocked pursuant to § 589.201.

§ 589.302 Effective date.

The term *effective date* refers to the effective date of the applicable prohibitions and directives contained in this part as follows:

(a) With respect to a person listed in the Annex to E.O. 13661 of March 16, 2014, 12:01 a.m. eastern daylight time, March 17, 2014; and

(b) With respect to a person whose property and interests in property are blocked pursuant to § 589.201, is the earlier of the date of actual or constructive notice that such person's property and interests in property are blocked.

§ 589.303 Entity.

The term *entity* means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization.

§ 589.304 Interest.

Except as otherwise provided in this part, the term *interest,* when used with respect to property (*e.g.,* ''an interest in property''), means an interest of any nature whatsoever, direct or indirect.

§ 589.305 Licenses; general and specific.

(a) Except as otherwise specified, the term *license* means any license or authorization contained in or issued pursuant to this part.

(b) The term *general license* means any license or authorization the terms of which are set forth in subpart E of this part or made available on OFAC's Web site: *www.treasury.gov/ofac.*

(c) The term *specific license* means any license or authorization issued pursuant to this part but not set forth in subpart E of this part or made available on OFAC's Web site: *www.treasury.gov/ofac.*

Note to § 589.305: *See* § 501.801 of this chapter on licensing procedures.

§ 589.306 OFAC.

The term *OFAC* means the Department of the Treasury's Office of Foreign Assets Control.

§ 589.307 Person.

The term *person* means an individual or entity.

§ 589.308 Property; property interest.

The terms *property* and *property interest* include, but are not limited to, money, checks, drafts, bullion, bank deposits, savings accounts, debts, indebtedness, obligations, notes, guarantees, debentures, stocks, bonds, coupons, any other financial instruments, bankers acceptances, mortgages, pledges, liens or other rights in the nature of security, warehouse receipts, bills of lading, trust receipts, bills of sale, any other evidences of title, ownership or indebtedness, letters of credit and any documents relating to any rights or obligations thereunder, powers of attorney, goods, wares, merchandise, chattels, stocks on hand, ships, goods on ships, real estate mortgages, deeds of trust, vendors' sales agreements, land contracts, leaseholds, ground rents, real estate and any other interest therein, options, negotiable instruments, trade acceptances, royalties, book accounts, accounts payable, judgments, patents, trademarks or copyrights, insurance policies, safe deposit boxes and their contents, annuities, pooling agreements, services of any nature whatsoever, contracts of any nature whatsoever, and any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future, or contingent.

§ 589.309 Transfer.

The term *transfer* means any actual or purported act or transaction, whether or not evidenced by writing, and whether or not done or performed within the United States, the purpose, intent, or effect of which is to create, surrender, release, convey, transfer, or alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property. Without limitation on the foregoing, it shall include the making, execution, or delivery of any assignment, power, conveyance, check, declaration, deed, deed of trust, power of attorney, power of appointment, bill of sale, mortgage, receipt, agreement, contract, certificate, gift, sale, affidavit, or statement; the making of any payment; the setting off of any obligation or credit; the appointment of any agent, trustee, or fiduciary; the creation or transfer of any lien; the issuance, docketing, or filing of, or levy of or under, any judgment, decree, attachment, injunction, execution, or other judicial or administrative process or order, or the service of any garnishment; the acquisition of any interest of any nature whatsoever by reason of a judgment or decree of any foreign country; the fulfillment of any condition; the exercise of any power of appointment, power of attorney, or other power; or the acquisition, disposition, transportation, importation, exportation, or withdrawal of any security.

§ 589.310 Ukraine-Related Executive Orders.

The term ''Ukraine-Related Executive Orders'' means Executive Order 13660 of March 6, 2014, Executive Order 13661 of March 16, 2014, and Executive Order 13662 of March 20, 2014.

§ 589.311 United States.

The term *United States* means the United States, its territories and possessions, and all areas under the jurisdiction or authority thereof.

§ 589.312 United States person; U.S. person.

The term *United States person* or *U.S. person* means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

§ 589.313 U.S. financial institution.

The term *U.S. financial institution* means any U.S. entity (including its foreign branches) that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, securities, or commodity futures or options, or procuring purchasers and sellers thereof, as principal or agent. It includes but is not limited to depository institutions, banks, savings banks, trust companies, securities brokers and dealers, commodity futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, and U.S. holding companies, U.S. affiliates, or U.S. subsidiaries of any of the foregoing. This term includes those branches, offices, and agencies of foreign financial institutions that are located in the United States, but not

such institutions' foreign branches, offices, or agencies.

Subpart D—Interpretations

§ 589.401 [Reserved]

§ 589.402 Effect of amendment.

Unless otherwise specifically provided, any amendment, modification, or revocation of any provision in or appendix to this part or chapter or of any order, regulation, ruling, instruction, or license issued by OFAC does not affect any act done or omitted, or any civil or criminal proceeding commenced or pending, prior to such amendment, modification, or revocation. All penalties, forfeitures, and liabilities under any such order, regulation, ruling, instruction, or license continue and may be enforced as if such amendment, modification, or revocation had not been made.

§ 589.403 Termination and acquisition of an interest in blocked property.

(a) Whenever a transaction licensed or authorized by or pursuant to this part results in the transfer of property (including any property interest) away from a person whose property and interests in property are blocked pursuant to § 589.201, such property shall no longer be deemed to be property blocked pursuant to § 589.201, unless there exists in the property another interest that is blocked pursuant to § 589.201, the transfer of which has not been effected pursuant to license or other authorization.

(b) Unless otherwise specifically provided in a license or authorization issued pursuant to this part, if property (including any property interest) is transferred or attempted to be transferred to a person whose property and interests in property are blocked pursuant to § 589.201, such property shall be deemed to be property in which that person has an interest and therefore blocked.

§ 589.404 Transactions ordinarily incident to a licensed transaction.

Any transaction ordinarily incident to a licensed transaction and necessary to give effect thereto is also authorized, except:

(a) An ordinarily incident transaction, not explicitly authorized within the terms of the license, by or with a person whose property and interests in property are blocked pursuant to § 589.201; or

(b) An ordinarily incident transaction, not explicitly authorized within the terms of the license, involving a debit to a blocked account or a transfer of blocked property.

§ 589.405 Setoffs prohibited.

A setoff against blocked property (including a blocked account), whether by a U.S. bank or other U.S. person, is a prohibited transfer under § 589.201 if effected after the effective date.

§ 589.406 Entities owned by a person whose property and interests in property are blocked.

A person whose property and interests in property are blocked pursuant to § 589.201 has an interest in all property and interests in property of an entity in which it owns, directly or indirectly, a 50 percent or greater interest. The property and interests in property of such an entity, therefore, are blocked, and such an entity is a person whose property and interests in property are blocked pursuant to § 589.201, regardless of whether the name of the entity is incorporated into OFAC's Specially Designated Nationals and Blocked Persons List (''SDN List'').

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

§ 589.501 General and specific licensing procedures.

For provisions relating to licensing procedures, see part 501, subpart E, of this chapter. Licensing actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part. General licenses and statements of licensing policy relating to this part also may be available through the Ukraine-related sanctions page on OFAC's Web site: *www.treasury.gov/ofac.*

§ 589.502 [Reserved]

§ 589.503 Exclusion from licenses.

OFAC reserves the right to exclude any person, property, transaction, or class thereof from the operation of any license or from the privileges conferred by any license. OFAC also reserves the right to restrict the applicability of any license to particular persons, property, transactions, or classes thereof. Such actions are binding upon actual or constructive notice of the exclusions or restrictions.

§ 589.504 Payments and transfers to blocked accounts in U.S. financial institutions.

Any payment of funds or transfer of credit in which a person whose property and interests in property are blocked pursuant to § 589.201 has any interest that comes within the possession or control of a U.S. financial institution must be blocked in an account on the books of that financial institution. A transfer of funds or credit by a U.S. financial institution between blocked accounts in its branches or offices is authorized, provided that no transfer is made from an account within the United States to an account held outside the United States, and further provided that a transfer from a blocked account may be made only to another blocked account held in the same name.

Note to § 589.504: *See* § 501.603 of this chapter for mandatory reporting requirements regarding financial transfers. *See also* § 589.203 concerning the obligation to hold blocked funds in interest-bearing accounts.

§ 589.505 Entries in certain accounts for normal service charges authorized.

(a) A U.S. financial institution is authorized to debit any blocked account held at that financial institution in payment or reimbursement for normal service charges owed it by the owner of that blocked account.

(b) As used in this section, the term *normal service charges* shall include charges in payment or reimbursement for interest due; cable, telegraph, Internet, or telephone charges; postage costs; custody fees; small adjustment charges to correct bookkeeping errors; and, but not by way of limitation, minimum balance charges, notary and protest fees, and charges for reference books, photocopies, credit reports, transcripts of statements, registered mail, insurance, stationery and supplies, and other similar items.

§ 589.506 Provision of certain legal services authorized.

(a) The provision of the following legal services to or on behalf of persons whose property and interests in property are blocked pursuant to § 589.201 or any further Executive orders relating to the national emergency declared in Executive Order 13660 of March 6, 2014, is authorized, provided that receipt of payment of professional fees and reimbursement of incurred expenses must be specifically licensed or otherwise authorized pursuant to § 589.507:

(1) Provision of legal advice and counseling on the requirements of and compliance with the laws of the United States or any jurisdiction within the United States, provided that such advice and counseling are not provided to facilitate transactions in violation of this part;

(2) Representation of persons named as defendants in or otherwise made parties to legal, arbitration, or administrative proceedings before any U.S. federal, state, or local court or agency;

(3) Initiation and conduct of legal, arbitration, or administrative proceedings before any U.S. federal, state, or local court or agency;

(4) Representation of persons before any U.S. federal, state, or local court or agency with respect to the imposition, administration, or enforcement of U.S. sanctions against such persons; and

(5) Provision of legal services in any other context in which prevailing U.S. law requires access to legal counsel at public expense.

(b) The provision of any other legal services to persons whose property and interests in property are blocked pursuant to § 589.201 or any further Executive orders relating to the national emergency declared in Executive Order 13660 of March 6, 2014, not otherwise authorized in this part, requires the issuance of a specific license.

(c) Entry into a settlement agreement or the enforcement of any lien, judgment, arbitral award, decree, or other order through execution, garnishment, or other judicial process purporting to transfer or otherwise alter or affect property or interests in property blocked pursuant to § 589.201 or any further Executive orders relating to the national emergency declared in Executive Order 13660 of March 6, 2014, is prohibited unless licensed pursuant to this part.

Note to § 589.506: U.S. persons seeking administrative reconsideration or judicial review of their designation or the blocking of their property and interests in property may apply for a specific license from OFAC to authorize the release of a limited amount of blocked funds for the payment of legal fees where alternative funding sources are not available. For more information, see OFAC's *Guidance on the Release of Limited Amounts of Blocked Funds for Payment of Legal Fees and Costs Incurred in Challenging the Blocking of U.S. Persons in Administrative or Civil Proceedings,* which is available on OFAC's Web site: *www.treasury.gov/ofac.*

§ 589.507 Payments from funds originating outside the United States authorized.

Payments from funds originating outside the United States. Receipts of payment of professional fees and reimbursement of incurred expenses for the provision of legal services authorized pursuant to § 589.506(a) to or on behalf of any person whose property and interests in property are blocked pursuant to § 589.201 or any further Executive orders relating to the national emergency declared in Executive Order 13660 of March 6, 2014, are authorized from funds originating outside the United States, provided that:

(a) Prior to receiving payment for legal services authorized pursuant to § 589.506(a) rendered to persons whose property and interests in property are blocked pursuant to § 589.201 or any further Executive orders relating to the national emergency declared in Executive Order 13660 of March 6, 2014, the U.S. person that is an attorney, law firm, or legal services organization provides to OFAC a copy of a letter of engagement or a letter of intent to engage specifying the services to be performed and signed by the individual to whom such services are to be provided or, where services are to be provided to an entity, by a legal representative of the entity. The copy of a letter of engagement or a letter of intent to engage, accompanied by correspondence referencing this paragraph (a), is to be mailed to: Licensing Division, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW., Annex, Washington, DC 20220;

(b) The funds received by U.S. persons as payment of professional fees and reimbursement of incurred expenses for the provision of legal services authorized pursuant to § 589.506(a) must not originate from:

(1) A source within the United States;

(2) Any source, wherever located, within the possession or control of a U.S. person; or

(3) Any individual or entity, other than the person on whose behalf the legal services authorized pursuant to § 589.506(a) are to be provided, whose property and interests in property are blocked pursuant to any part of this chapter or any Executive order;

Note to paragraph (b) of § 589.507: This paragraph authorizes the blocked person on whose behalf the legal services authorized pursuant to § 589.506(a) are to be provided to make payments for authorized legal services using funds originating outside the United States that were not previously blocked. Nothing in this paragraph authorizes payments for legal services using funds in which any other person whose property and interests in property are blocked pursuant to § 589.201 or any further Executive orders relating to the national emergency declared in Executive Order 13660 of March 6, 2014, any other part of this chapter, or any Executive order holds an interest.

(c) *Reports.* (1) U.S. persons who receive payments in connection with legal services authorized pursuant to § 589.506(a) must submit quarterly reports no later than 30 days following the end of the calendar quarter during which the payments were received providing information on the funds received. Such reports shall specify:

(i) The individual or entity from whom the funds originated and the amount of funds received; and

(ii) If applicable:

(A) The names of any individuals or entities providing related services to the U.S. person receiving payment in connection with authorized legal services, such as private investigators or expert witnesses;

(B) A general description of the services provided; and

(C) The amount of funds paid in connection with such services.

(2) In the event that no transactions occur or no funds are received during the reporting period, a statement is to be filed to that effect; and

(3) The reports, which must reference this section, are to be mailed to: Licensing Division, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW., Annex, Washington, DC 20220.

Note 1 to § 589.507: U.S. persons who receive payments in connection with legal services authorized pursuant to § 589.506(a) do not need to obtain specific authorization to contract for related services that are ordinarily incident to the provision of those legal services, such as those provided by private investigators or expert witnesses, or to pay for such services. Additionally, U.S. persons do not need to obtain specific authorization to provide related services that are ordinarily incident to the provision of legal services authorized pursuant to § 589.506(a).

Note 2 to § 589.507: Any payment authorized in or pursuant to this paragraph that is routed through the U.S. financial system should reference § 589.507 to avoid the blocking of the transfer.

Note 3 to § 589.507: Nothing in this section authorizes the transfer of any blocked property, the debiting of any blocked account, the entry of any judgment or order that effects a transfer of blocked property, or the execution of any judgment against property blocked pursuant to any part of this chapter or any Executive order.

§ 589.508 Authorization of emergency medical services.

The provision of nonscheduled emergency medical services in the United States to persons whose property and interests in property are blocked pursuant to § 589.201(a) or any further Executive orders relating to the national emergency declared in Executive Order 13660 of March 6, 2014, is authorized, provided that all receipt of payment for such services must be specifically licensed.

Subpart F—[Reserved]

Subpart G—[Reserved]

Subpart H—Procedures

§ 589.801 [Reserved]

§ 589.802 Delegation by the Secretary of the Treasury.

Any action that the Secretary of the Treasury is authorized to take pursuant to the Ukraine-Related Executive Orders—with the exception of the determination of sectors of the Russian Federation economy under Section 1(a)(i) of Executive Order 13662 of March 20, 2014—and any further Executive orders relating to the national emergency declared in Executive Order 13660 of March 6, 2014, may be taken by the Director of OFAC or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

Subpart I—Paperwork Reduction Act

§ 589.901 Paperwork Reduction Act notice.

For approval by the Office of Management and Budget (''OMB'') under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) of information collections relating to recordkeeping and reporting requirements, licensing procedures (including those pursuant to statements of licensing policy), and other procedures, *see* § 501.901 of this chapter. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Appendix A to Part 589—Executive Order 13660

Executive Order 13660 of March 6, 2014

Blocking Property of Certain Persons Contributing to the Situation in Ukraine

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*) (NEA), section 212(f) of the Immigration and Nationality Act of 1952 (8 U.S.C. 1182(f)), and section 301 of title 3, United States Code,

I, BARACK OBAMA, President of the United States of America, find that the actions and policies of persons including persons who have asserted governmental authority in the Crimean region without the authorization of the Government of Ukraine that undermine democratic processes and institutions in Ukraine; threaten its peace, security, stability, sovereignty, and territorial integrity; and contribute to the misappropriation of its assets, constitute an unusual and extraordinary threat to the national security and foreign policy of the United States, and I hereby declare a national emergency to deal with that threat. I hereby order:

Section 1. (a) All property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person (including any foreign branch) of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in: any person determined by the Secretary of the Treasury, in consultation with the Secretary of State:

(i) To be responsible for or complicit in, or to have engaged in, directly or indirectly, any of the following:

(A) Actions or policies that undermine democratic processes or institutions in Ukraine;

(B) actions or policies that threaten the peace, security, stability, sovereignty, or territorial integrity of Ukraine; or

(C) misappropriation of state assets of Ukraine or of an economically significant entity in Ukraine;

(ii) to have asserted governmental authority over any part or region of Ukraine without the authorization of the Government of Ukraine;

(iii) to be a leader of an entity that has, or whose members have, engaged in any activity described in subsection (a)(i) or (a)(ii) of this section or of an entity whose property and interests in property are blocked pursuant to this order;

(iv) to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, any activity described in subsection (a)(i) or (a)(ii) of this section or any person whose property and interests in property are blocked pursuant to this order; or

(v) to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this order.

(b) The prohibitions in subsection (a) of this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order.

Sec. 2. I hereby find that the unrestricted immigrant and nonimmigrant entry into the United States of aliens determined to meet one or more of the criteria in subsection 1(a) of this order would be detrimental to the interests of the United States, and I hereby suspend entry into the United States, as immigrants or nonimmigrants, of such persons. Such persons shall be treated as persons covered by section 1 of Proclamation 8693 of July 24, 2011 (Suspension of Entry of Aliens Subject to United Nations Security Council Travel Bans and International Emergency Economic Powers Act Sanctions).

Sec. 3. I hereby determine that the making of donations of the type of articles specified in section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)) by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to section 1 of this order would seriously impair my ability to deal with the national emergency declared in this order, and I hereby prohibit such donations as provided by section 1 of this order.

Sec. 4. The prohibitions in section 1 of this order include but are not limited to:

(a) The making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to this order; and

(b) the receipt of any contribution or provision of funds, goods, or services from any such person.

Sec. 5. (a) Any transaction that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in this order is prohibited.

(b) Any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

Sec. 6. For the purposes of this order:

(a) the term ''person'' means an individual or entity;

(b) the term ''entity'' means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization; and

(c) the term ''United States person'' means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

Sec. 7. For those persons whose property and interests in property are blocked pursuant to this order who might have a constitutional presence in the United States, I find that because of the ability to transfer funds or other assets instantaneously, prior notice to such persons of measures to be taken pursuant to this order would render those measures ineffectual. I therefore determine that for these measures to be effective in addressing the national emergency declared in this order, there need be no prior notice of a listing or determination made pursuant to section 1 of this order.

Sec. 8. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA, as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government consistent with applicable law. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order.

Sec. 9. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to submit the recurring and final reports to the Congress on the national emergency declared in this order, consistent with section 401(c) of the NEA (50 U.S.C. 1641(c)) and section 204(c) of IEEPA (50 U.S.C. 1703(c)).

Sec. 10. This order is not intended to, and does not, create any right or benefit,

substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Barack Obama
THE WHITE HOUSE,
March 6, 2014

Appendix B to Part 589—Executive Order 13661

Executive Order 13661 of March 16, 2014

Blocking Property of Additional Persons Contributing to the Situation in Ukraine

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 et seq.) (NEA), section 212(f) of the Immigration and Nationality Act of 1952 (8 U.S.C. 1182(f)), and section 301 of title 3, United States Code,

I, BARACK OBAMA, President of the United States of America, hereby expand the scope of the national emergency declared in Executive Order 13660 of March 6, 2014, finding that the actions and policies of the Government of the Russian Federation with respect to Ukraine—including the recent deployment of Russian Federation military forces in the Crimea region of Ukraine—undermine democratic processes and institutions in Ukraine; threaten its peace, security, stability, sovereignty, and territorial integrity; and contribute to the misappropriation of its assets, and thereby constitute an unusual and extraordinary threat to the national security and foreign policy of the United States. Accordingly, I hereby order:

Section 1. (a) All property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person (including any foreign branch) of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in:

(i) The persons listed in the Annex to this order; and

(ii) persons determined by the Secretary of the Treasury, in consultation with the Secretary of State:

(A) To be an official of the Government of the Russian Federation;

(B) to operate in the arms or related materiel sector in the Russian Federation;

(C) to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly:

(1) A senior official of the Government of the Russian Federation; or

(2) a person whose property and interests in property are blocked pursuant to this order; or

(D) to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of:

(1) A senior official of the Government of the Russian Federation; or

(2) a person whose property and interests in property are blocked pursuant to this order.

(b) The prohibitions in subsection (a) of this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order.

Sec. 2. I hereby find that the unrestricted immigrant and nonimmigrant entry into the United States of aliens determined to meet one or more of the criteria in section 1(a) of this order would be detrimental to the interests of the United States, and I hereby suspend entry into the United States, as immigrants or nonimmigrants, of such persons. Such persons shall be treated as persons covered by section 1 of Proclamation 8693 of July 24, 2011 (Suspension of Entry of Aliens Subject to United Nations Security Council Travel Bans and International Emergency Economic Powers Act Sanctions).

Sec. 3. I hereby determine that the making of donations of the type of articles specified in section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)) by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to section 1 of this order would seriously impair my ability to deal with the national emergency declared in Executive Order 13660, and I hereby prohibit such donations as provided by section 1 of this order.

Sec. 4. The prohibitions in section 1 of this order include but are not limited to:

(a) The making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to this order; and

(b) the receipt of any contribution or provision of funds, goods, or services from any such person.

Sec. 5. (a) Any transaction that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in this order is prohibited.

(b) Any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

Sec. 6. For the purposes of this order:

(a) The term ''person'' means an individual or entity;

(b) the term ''entity'' means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization;

(c) the term ''United States person'' means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States; and

(d) the term the ''Government of the Russian Federation'' means the Government of the Russian Federation, any political subdivision, agency, or instrumentality thereof, including the Central Bank of the Government of the Russian Federation, and any person owned or controlled by, or acting for or on behalf of, the Government of the Russian Federation.

Sec. 7. For those persons whose property and interests in property are blocked pursuant to this order who might have a constitutional presence in the United States, I find that because of the ability to transfer funds or other assets instantaneously, prior notice to such persons of measures to be taken pursuant to this order would render those measures ineffectual. I therefore determine that for these measures to be effective in addressing the national emergency declared in Executive Order 13660, there need be no prior notice of a listing or determination made pursuant to section 1 of this order.

Sec. 8. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA, as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government consistent with applicable law. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order.

Sec. 9. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to determine that circumstances no longer warrant the blocking of the property and interests in property of a person listed in the Annex to this order, and to take necessary action to give effect to that determination.

Sec. 10. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Sec. 11. This order is effective at 12:01 a.m. eastern daylight time on March 17, 2014.

Barack Obama
THE WHITE HOUSE,
March 17, 2014

Appendix C to Part 589—Executive Order 13662

Executive Order 13662 of March 20, 2014

Blocking Property of Additional Persons Contributing to the Situation in Ukraine

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 et seq.) (NEA), section 212(f) of the Immigration and Nationality Act of 1952 (8 U.S.C. 1182(f)), and section 301 of title 3, United States Code,

I, BARACK OBAMA, President of the United States of America, hereby expand the scope of the national emergency declared in Executive Order 13660 of March 6, 2014, and expanded by Executive Order 13661 of March 16, 2014, finding that the actions and policies of the Government of the Russian Federation, including its purported annexation of Crimea and its use of force in Ukraine, continue to undermine democratic processes and institutions in Ukraine;

threaten its peace, security, stability, sovereignty, and territorial integrity; and contribute to the misappropriation of its assets, and thereby constitute an unusual and extraordinary threat to the national security and foreign policy of the United States. Accordingly, I hereby order:

Section 1. (a) All property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person (including any foreign branch) of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in: Any person determined by the Secretary of the Treasury, in consultation with the Secretary of State:

(i) To operate in such sectors of the Russian Federation economy as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State, such as financial services, energy, metals and mining, engineering, and defense and related materiel;

(ii) to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, any person whose property and interests in property are blocked pursuant to this order; or

(iii) to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this order.

(b) The prohibitions in subsection (a) of this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order.

Sec. 2. I hereby find that the unrestricted immigrant and nonimmigrant entry into the United States of aliens determined to meet one or more of the criteria in section 1(a) of this order would be detrimental to the interests of the United States, and I hereby suspend entry into the United States, as immigrants or nonimmigrants, of such persons. Such persons shall be treated as persons covered by section 1 of Proclamation 8693 of July 24, 2011 (Suspension of Entry of Aliens Subject to United Nations Security Council Travel Bans and International Emergency Economic Powers Act Sanctions).

Sec. 3. I hereby determine that the making of donations of the type of articles specified in section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)) by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to section 1 of this order would seriously impair my ability to deal with the national emergency declared in Executive Order 13660, and expanded in Executive Order 13661 and this order, and I hereby prohibit such donations as provided by section 1 of this order.

Sec. 4. The prohibitions in section 1 of this order include but are not limited to:

(a) The making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to this order; and

(b) the receipt of any contribution or provision of funds, goods, or services from any such person.

Sec. 5. (a) Any transaction that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in this order is prohibited.

(b) Any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

Sec. 6. For the purposes of this order:

(a) The term ''person'' means an individual or entity;

(b) the term ''entity'' means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization;

(c) the term ''United States person'' means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States; and

(d) the term the ''Government of the Russian Federation'' means the Government of the Russian Federation, any political subdivision, agency, or instrumentality thereof, including the Central Bank of the Russian Federation, and any person owned or controlled by, or acting for or on behalf of, the Government of the Russian Federation.

Sec. 7. For those persons whose property and interests in property are blocked pursuant to this order who might have a constitutional presence in the United States, I find that because of the ability to transfer funds or other assets instantaneously, prior notice to such persons of measures to be taken pursuant to this order would render those measures ineffectual. I therefore determine that for these measures to be effective in addressing the national emergency declared in Executive Order 13660, and expanded in Executive Order 13661 and this order, there need be no prior notice of a listing or determination made pursuant to section 1 of this order.

Sec. 8. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA, as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government consistent with applicable law. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order.

Sec. 9. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Barack Obama
THE WHITE HOUSE,
March 20, 2014

Dated: May 2, 2014.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

Approved:
Dated: May 2, 2014.

David S. Cohen,

Under Secretary, Office of Terrorism and Financial Intelligence, Department of the Treasury.

[FR Doc. 2014–10576 Filed 5–7–14; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[USCG–2014–0305]

Special Local Regulation: Newport to Bermuda Regatta, Narragansett Bay, Newport, RI

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Special Local Regulation for the biennial Newport to Bermuda Regatta, Narragansett Bay, Rhode Island, from 9 a.m. to 4:30 p.m. on Friday, June 20, 2014. During the enforcement period, no person or vessel may enter or remain in the regulated area except for participants in the event, supporting personnel, vessels registered with the event organizer, and personnel or vessels authorized by the Coast Guard on-scene patrol commander.

DATES: The regulations in 33 CFR 100.119 will be enforced from 9 a.m. to 4:30 p.m. on June 20, 2014.

FOR FURTHER INFORMATION CONTACT: Mr. Edward LeBlanc, Chief, Waterways Management Division, Sector Southeastern New England, (401) 435–2351.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulation for the biennial Newport/Bermuda Regatta, Narragansett Bay, Newport, RI, from 9 a.m. to 4:30 p.m. on Friday, June 20, 2014. A portion of the navigable waters of the East Passage, Narragansett Bay, Newport, RI or its approaches will be closed during the effective period to all vessel traffic, except local, state or Coast Guard patrol craft. The full text of this regulation is found in 33 CFR 100.119. Additional public notification will be made via the First Coast Guard District Local Notice to Mariners and marine safety broadcasts.

Dated: April 21, 2014.

J.T. Kondratowicz,

Captain, U.S. Coast Guard, Captain of the Port, Southeastern New England.

[FR Doc. 2014–10621 Filed 5–7–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Parts 1, 10, 11, 12, 13, 14, and 15

[Docket No. USCG–2014–0016]

Policy Implementing the Standards of Training, Certification, and Watchkeeping Final Rule

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability.

SUMMARY: The Coast Guard announces the availability of ten Navigation and Vessel Inspection Circulars (NVICs), which are the second set of a series of NVICs to implement the Final Rule that aligned Coast Guard regulations with amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers and made changes to national endorsements. These NVICs will provide guidance to mariners concerning new regulations governing merchant mariner certificates and endorsements to Merchant Mariner Credentials (MMC).

DATES: These NVICs are effective on May 8, 2014.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice, call or email Luke B. Harden, Mariner Credentialing Program Policy Division (CG–CVC–4), U.S. Coast Guard; telephone 202–372–2357, or *MMCPolicy@uscg.mil.* If you have questions on viewing material in the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Viewing Documents

The ten NVICs listed below are available and can be viewed by going to *http://www.uscg.mil/nmc* and clicking on ''STCW Rule Information,'' then click on ''STCW Rule NVICs''.

Discussion

On December 24, 2014, the Coast Guard published a Final Rule in the **Federal Register** (78 FR 77796) amending Title 46, Code of Federal Regulations, to implement the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, as amended 1978 (STCW Convention), including the 2010 amendments to the STCW Convention, and the Seafarers' Training, Certification and Watchkeeping Code. The final rule also made changes to reorganize, clarify, and update regulations for credentialing merchant mariners. In the future, the Coast Guard will issue additional NVICs to provide further guidance on the implementation of the new regulations regarding merchant mariner certificates and endorsements to Merchant Mariner Credentials (MMCs). The ten NVICs listed below represent the second phase of this effort:

1. Guidelines for Qualification for STCW Endorsements as Master or Chief Mate on Vessels of 3,000 GT or More (Management Level) (NVIC 10–14). This NVIC describes policy for merchant mariners to qualify for and renew STCW endorsements as Master and Chief Mate for service on vessels of 3,000 Gross Tonnage (GT) or more.

2. Guidelines for Qualification for STCW Endorsements as Master or Chief Mate on Vessels of 500 GT or More and Less Than 3,000 GT (Management Level) (NVIC 11–14). This NVIC describes policy for merchant mariners to qualify for and renew STCW endorsements as Master and Chief Mate for service on vessels of 500 GT or more and less than 3,000 GT.

3. Guidelines for Qualification for STCW Endorsements as Officer in Charge of a Navigational Watch on Vessels of 500 GT or More (NVIC 12–14). This NVIC describes policy for merchant mariners to qualify for and renew STCW endorsements as Officer in Charge of a Navigational Watch (OICNW) for service on vessels of 500 GT or more.

4. Guidelines for Qualification for STCW Endorsements as Master or Officer in Charge of a Navigational Watch of Vessels of Less than 500 GT Limited to Near-Coastal Waters (NVIC 13–14). This NVIC describes policy for merchant mariners to qualify for and renew STCW endorsements as Master and OICNW for service on vessels less than 500 GT on near coastal waters.

5. Guidelines for Qualification for STCW Endorsements as Able Seafarer-Deck (NVIC 14–14). This NVIC describes policy for merchant mariners to qualify for and renew STCW endorsements as Able Seafarer-Deck.

6. Guidelines for Qualification for STCW Endorsements as Chief Engineer Officer and Second Engineer Officer on Ships Powered by Main Propulsion Machinery of 3,000 kW/4,000 HP Propulsion Power or More (Management Level) (NVIC 15–14). This NVIC describes policy for merchant mariners to qualify for and renew STCW endorsements as Chief Engineer Officer (CEO) and Second Engineer Officer (2EO) for service on vessels powered by main propulsion machinery of 3,000 kW/4,000 HP propulsion power or more.

7. Guidelines for Qualification for STCW Endorsements of Chief Engineer Officer and Second Engineer Officer on Ships Powered by Main Propulsion Machinery of 750 kW/1,000 HP or More and Less Than 3,000 kW/4,000 HP Propulsion Power (Management Level) (NVIC 16–14). This NVIC describes policy for merchant mariners to qualify for and renew STCW endorsements as CEO and 2EO for service on vessels powered by main propulsion machinery of 750 kW/1,000 HP propulsion power or more and less than 3,000 kW/4,000 HP Propulsion Power.

8. Guidelines for Qualification for STCW Endorsements as Officer In Charge of an Engineering Watch in a Manned Engineroom or Designated Duty Engineer in a Periodically Unmanned Engineroom on Vessels Powered by Main Propulsion Machinery of 750 kW/1,000 HP Propulsion Power or More (Operational Level)(NVIC 17–14). This NVIC describes policy for merchant mariners to qualify for and renew STCW endorsements as Officer in Charge of an Engineering Watch for service on vessels powered by main propulsion machinery of 750 kW/1,000 HP propulsion power or more.

9. Guidelines for Qualification for STCW Endorsements as Able Seafarer-Engine (NVIC 18–14). This NVIC describes policy for merchant mariners to qualify for and renew STCW endorsements as Able Seafarer-Engine.

10. Policy on Qualified Assessors (NVIC 19–14). This NVIC describes policy for Qualified Assessors who will assess the competency of candidates for STCW endorsements.

Authority: This notice is issued under the authority of 5 U.S.C. 552(a).

Dated: April 29, 2014.

J.C. Burton,

Captain, U.S. Coast Guard, Director, Inspection & Compliance.

[FR Doc. 2014–10530 Filed 5–7–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 120815345–3525–02]

RIN 0648–XD271

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; 2014 Commercial Accountability Measure and Closure for South Atlantic Gray Triggerfish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS implements accountability measures for commercial gray triggerfish in the exclusive economic zone (EEZ) of the South Atlantic. Commercial landings for gray triggerfish, as estimated by the Science and Research Director, are projected to reach the commercial annual catch limit (ACL) on May 12, 2014. Therefore, NMFS is closing the commercial sector for gray triggerfish in the South Atlantic EEZ on May 12, 2014, and it will remain closed until the start of the next fishing season, January 1, 2015. This closure is necessary to protect the gray triggerfish resource.

DATES: This rule is effective 12:01 a.m., local time, May 12, 2014, until 12:01 a.m., local time, January 1, 2015.

FOR FURTHER INFORMATION CONTACT: Catherine Hayslip, telephone: 727–824–5305, email: *Catherine.Hayslip@noaa.gov.*

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic includes gray triggerfish and is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the South Atlantic Fishery Management Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The commercial ACL for gray triggerfish in the South Atlantic is 272,880 lb (123,776 kg), round weight, for the current fishing year, January 1 through December 31, 2014, as specified in 50 CFR 622.193(q)(1)(i).

Under 50 CFR 622.193(q)(1), NMFS is required to close the commercial sector for gray triggerfish when the commercial ACL is reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. NMFS has determined that the commercial ACL for South Atlantic gray triggerfish will have been reached by May 12, 2014. Accordingly, the commercial sector for South Atlantic gray triggerfish is closed effective 12:01 a.m., local time, May 12, 2014, until 12:01 a.m., local time, January 1, 2015.

The operator of a vessel with a valid commercial vessel permit for South Atlantic snapper-grouper having gray triggerfish onboard must have landed and bartered, traded, or sold such gray triggerfish prior to 12:01 a.m., local time, May 12, 2014. During the closure, the bag limit specified in 50 CFR 622.187(b)(8), applies to all harvest or possession of gray triggerfish in or from the South Atlantic EEZ. During the closure, the possession limits specified in 50 CFR 622.187(c), apply to all harvest or possession of gray triggerfish in or from the South Atlantic EEZ. During the closure, the sale or purchase of gray triggerfish taken from the EEZ is prohibited. The prohibition on sale or purchase does not apply to the sale or purchase of gray triggerfish that were harvested, landed ashore, and sold prior to 12:01 a.m., local time, May 12, 2014, and were held in cold storage by a dealer or processor.

For a person on board a vessel for which a Federal commercial or charter vessel/headboat permit for the South Atlantic snapper-grouper fishery has been issued, the bag and possession limit and sale and purchase provisions of the commercial closure for gray triggerfish would apply regardless of whether the fish are harvested in state or Federal waters, as specified in 50 CFR 622.193(q)(1)(i).

Classification

The Regional Administrator, Southeast Region, NMFS, has determined this temporary rule is necessary for the conservation and management of gray triggerfish and the South Atlantic snapper-grouper fishery and is consistent with the Magnuson-Stevens Act, the FMP, and other applicable laws.

This action is taken under 50 CFR 622.193(q)(1) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

This action responds to the best available scientific information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds that the need to immediately implement this action to close the commercial sector for gray triggerfish constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), as such procedures would be unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule itself has been subject to notice and comment, and all that remains is to notify the public of the closure.

Allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action to protect gray triggerfish since the capacity of the fishing fleet allows for rapid harvest of the commercial ACL. Prior notice and opportunity for public comment would require time and would potentially result in a harvest well in excess of the established commercial ACL.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 5, 2014.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2014–10599 Filed 5–5–14; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 79, No. 89
Thursday, May 8, 2014

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 203

[Docket No. FR–5744–P–01]

RIN 2502–AJ20

Federal Housing Administration (FHA): Adjustable Rate Mortgage Notification Requirements and Look-Back Period for FHA-Insured Single Family Mortgages

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (HUD).

ACTION: Proposed rule.

SUMMARY: This rule proposes two revisions to FHA's regulations governing its single family adjustable rate mortgage (ARM) program to align FHA interest rate adjustment and notification regulations with the requirements for notifying mortgagors of ARM adjustments, as required by the regulations implementing the Truth in Lending Act (TILA), as recently revised by the Consumer Financial Protection Bureau (CFPB). The first proposed amendment of this rule would require that an interest rate adjustment resulting in a corresponding change to the mortgagor's monthly payment for an ARM be based on the most recent index value available 45 days before the date of the rate adjustment. The date that the newly adjusted interest rate goes into effect is often referred to as the ''interest change date.'' The number of days prior to the interest change date on which the index value is selected is called the ''look-back period.'' FHA's current regulations provide for a 30-day look-back period. The second proposed amendment would require that the mortgagee of an FHA-insured ARM comply with the disclosure and notification requirements of the 2013 TILA Servicing Rule, including at least a 60-day but no more than 120-day advance notice of an adjustment to a mortgagor's monthly payment. FHA's current regulations provide for notification at least 25 days in advance of an adjustment to a mortgagor's monthly payment.

DATES: *Comment Due Date:* June 9, 2014.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (fax) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m., weekdays, at the above address. Due to security measures at the HUD Headquarters building, an appointment to review the public comments must be scheduled in advance by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Patricia J. McClung, Acting Director, Office of Single Family Program Development, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 9278, Washington, DC 20410; telephone number 202–708–3175 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose of the Regulatory Action

This proposed rule would align FHA's regulations governing its single family ARM program with the interest rate adjustment and disclosure and notification periods required for ARMs by TILA, as implemented by the CFPB in a final rule published in the **Federal Register** on February 14, 2013, at 78 FR 10902, and entitled ''Mortgage Servicing Rules Under the Truth in Lending Act (Regulation Z).'' [1] This February 2013 final rule, referred to in this preamble as the 2013 TILA Servicing Rule, set the ARM adjustment notice requirement to a period of between 60 days (minimum) and 120 days (maximum) before the newly adjusted payment is due. Additionally, the 2013 TILA Servicing Rule established 45 days as the minimum ARM look-back period. In the preamble to the 2013 TILA Servicing Rule, the CFPB states that FHA's current 30-day look-back period does not provide sufficient time to notify the mortgagor of an interest rate and monthly payment adjustment. To allow HUD sufficient time to comply with the notification requirements of the 2013 TILA Servicing Rule, the CFPB delayed the effective date of the notification requirements in the 2013 TILA

[1] The CFPB initially published the rule on its Web site: *http://www.consumerfinance.gov/regulations/2013-real-estate-settlement-procedures-act-regulation-x-and-truth-in-lending-act-regulation-z-mortgage-servicing-final-rules/.*

Servicing Rule to January 10, 2015, for ARMs insured by FHA with a 30-day look-back period. Therefore, FHA-insured ARMs originated on or after January 10, 2015, must comply with the new notification requirements of the 2013 TILA Servicing Rule.

B. Summary of the Major Provisions of the Regulatory Action

To comply with the 2013 TILA Servicing Rule, FHA proposes two amendments to its regulations. First, FHA proposes to amend 24 CFR 203.49(d)(2) to require FHA-approved mortgagees, in setting a new interest rate, to use the current index figure that is the most recent index figure available 45 days (rather than the current 30 days) before the date of an interest rate adjustment. Revising the current 30-day look-back period to 45 days would enable FHA-approved mortgagees to meet the 60- to 120-day notification period prior to any adjustment to a mortgagor's monthly payment that may occur, as required by the 2013 TILA Servicing Rule.

The second proposed revision would update 24 CFR 203.49(h) to cross-reference the disclosure and notification requirements for interest rate and payment adjustments for ARMs, including the timing, content, and format of such disclosures, contained in the 2013 TILA Servicing Rule at 12 CFR 1026.20(c) and (d). The disclosure requirements of § 1026.20(d) govern the initial rate adjustment of an ARM, while those of § 1026.20(c) govern subsequent rate adjustments.

Currently, FHA-approved mortgagees must only notify the mortgagor at least 25 days before any adjustment to a mortgagor's monthly payment may occur and inform the borrower of the new mortgage interest rate, the amount of the new monthly payment, the current index interest rate value, and how the payment adjustment was calculated (see 24 CFR 203.49(h)). In cross-referencing paragraph (c) of 12 CFR 1026.20, HUD would require the mortgagee of an FHA-insured ARM to provide the mortgagor with specific and prescribed disclosures in connection with any adjustment of the interest rate, as required by the loan contract, that results in a corresponding adjustment to the mortgagor's monthly payment. These required disclosures must be provided to the mortgagor at least 60 days, but not more than 120 days, before the first payment at the adjusted level is due. In cross-referencing paragraph (d) of 12 CFR 1026.20, the mortgagee would be required, the first time the interest rate adjusts the monthly payment of an FHA-insured ARM, to provide the appropriate disclosures to the mortgagor at least 210, but not more than 240, days before the first payment at the adjusted level is due.

C. Costs and Benefits

Since an overwhelming majority of ARMs originated in the conventional mortgage market currently have a 45-day look-back period [2] and were required to comply with the 2013 TILA Servicing Rule notification requirements on January 10, 2014, well before the effective date of this proposed rule, there should be little, if any, burden to apply the same 2013 TILA Servicing Rule requirements on FHA-insured ARMs. Therefore, the anticipated costs of this proposed rule are very minimal.

In determining the impact of the adjusted look-back period on a single ARM insured by FHA, the effect upon the mortgagor's monthly mortgage payment is the difference between the interest rate generated by an index available 45 days before the interest change date from that generated by the same index 30 days before the interest change date. This difference may be due to a trend in rates or the ''noise'' (minor fluctuations around that trend) or both. However, given any date in the future, it is impossible to know whether the rate will be higher or lower 15 days prior. Even over a period in which a trend is expected, the limited timeframe of 15 days and the noise around that change means the significance of the change to the look-back period is unknowable. Thus, while the 15-day change may affect specific outcomes, this change is not expected to have any generalizable impact on the economy with a clear direction and scale. For mortgagees that would have sent later notice to mortgagors, the proposed changes may potentially increase prepayment risk, the risk that a mortgagor will pay-off a loan before the end of its term by ensuring that borrowers have more time to prepare for a change. Conversely for the mortgagee, the change should also reduce default risk, the risk that the mortgagor will fail to pay in part or in full. For the mortgagor, the primary benefit of the change is an earlier reminder of the adjustment and, consequently, more time to pursue other outcomes prior to the interest change date.

Finally, since this proposed change conforms to the 2013 TILA Servicing rule, which was effective for an overwhelming majority of the ARM market on January 10, 2014, HUD does not anticipate that the revised disclosure requirements will impose significant costs on FHA-approved mortgagees, since they were required to make these notification adjustments by January 10, 2014. Additionally, since a majority of ARMs already have look-back periods of 45 days, the revised 45-day look-back period proposed by FHA is consistent with current industry norms.

II. Background

Section 251 of the National Housing Act (12 U.S.C. 1715z–16) authorizes FHA to insure mortgagees against default by the mortgagors that obtain home purchase loans or refinancing loans with interest rates that will change over time, such as ARMs. The interest rates on these loans are initially lower than that of a fixed rate mortgage, but may increase or decrease over the life of the loan. An ARM provides a home mortgage option for a mortgagor who may be planning to own his or her home for only a few years, expects an increase in future earnings, or finds the prevailing interest rate for a fixed-rate mortgage to be too high. The regulations governing FHA's ARM program presently are codified in 24 CFR 203.49.

The types of ARMs that FHA insures are those for which the interest rate may be adjusted annually by the FHA-approved mortgagee, beginning after 1, 3, 5, 7, or 10 years from the date of the mortgagor's first debt service payment.[3] FHA's ARM program provides that changes in the interest rate charged on an ARM must correspond either to changes in the 1-year London Interbank Offered Rate (LIBOR) or to changes in the weekly average yield on U.S. Treasury securities, adjusted to a constant maturity of 1 year (see 24 CFR 203.49(b)). The regulations further provide that except as may be otherwise specified in the regulations, each change in the mortgage interest rate must correspond to the upward and downward change in the index.

FHA's current regulations establish a maximum amount that interest rates may increase or decrease. For 1- and 3-

[2] Approximately 88 percent of the ARMs guaranteed by Fannie Mae and Freddie Mac have 45-day look-back periods. See footnote 163 of the CFPB's February 14, 2013, final rule at 78 FR 10902, at 10984.

[3] FHA sometimes uses the terms ''standard 1-year ARM'' and ''hybrid ARM'' to describe the different periods of time that the initial interest rate of a mortgage is held constant before adjusting to the appropriate market index. A standard 1-year ARM product offers an initial interest rate held constant for 1 year. A hybrid ARM offers an initial interest rate that is constant for either the first 3, 5, 7, or 10 years of the mortgage, depending on its terms. For purposes of this proposed rule, the term ''ARM'' refers to both a standard 1-year ARM and hybrid ARM products. For an explanation of FHA-insured ARM products see: *http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/sfh/ins/203armt.*

year ARMs, no single adjustment to the interest rate may result in a change in either direction of more than 1 percentage point from the interest rate in effect for the period immediately preceding that adjustment. Additionally, index changes in excess of 1 percentage point may not be carried over for inclusion in an adjustment for a subsequent year. Adjustments in the effective rate of interest over the entire term of these ARMs may not result in a change, in either direction, of more than 5 percentage points from the initial contract interest rate. For 5-, 7-, and 10-year ARMs, no single adjustment to the interest rate may result in a change, in either direction, of more than 2 percentage points from the interest rate in effect for the period immediately preceding that adjustment. Similar to the 1- and 3-year ARMs, index changes in excess of 2 percentage points may not be carried over for inclusion in an adjustment in a subsequent year. For these ARMs, adjustments in the effective rate of interest over the entire term of the mortgage may not result in a change, in either direction, of more than 6 percentage points from the initial contract rate.

FHA's existing ARM program provides that interest rate changes may be implemented only through adjustments to the mortgagor's monthly payments. FHA's regulations provide that FHA-approved mortgagees must disclose to the mortgagor the terms of the ARM at the time of loan application. The regulations further provide that FHA-approved mortgagees must notify the mortgagor at least 25 days before any adjustment to a mortgagor's monthly payment may occur, informing the borrower of the new mortgage interest rate, the amount of the new monthly payment, the current index interest rate value, and how the payment adjustment was calculated (see 24 CFR 203.49(h)).

To set a new interest rate, the FHA-approved mortgagee will determine if there is a change between the initial (i.e., base) index figure and the current index figure or will add a specific margin to the current index figure. The regulations provide that the initial index figure shall be the most recent figure available before the date of the mortgage loan origination, and the current index figure shall be the most recent index figure available 30 days before the date of each interest rate adjustment. Thus, HUD's existing regulations establish a 30-day look-back period for determining the current index figure (see 24 CFR 203.49(d)(2)).

At the time FHA adopted the at-least-25-day advance notification period and the 30-day look-back period, these time periods were consistent with the regulations implementing TILA, as promulgated by the Federal Reserve Board (FRB), which had, until July 21, 2011, responsibility for oversight of compliance with TILA (15 U.S.C. 1601 *et seq.*). The predecessor FRB regulations, codified at 12 CFR part 1026, required notice of rate adjustments between 25 days and 120 days prior to the due date of the new payment. The Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203, approved July 21, 2010), transferred this responsibility to the CFPB, and the CFPB revised Regulation Z and changed the periods for advance notice of rate adjustments.

As discussed above, the 2013 TILA Servicing Rule, which became effective January 10, 2014, revised the time frame for providing the ARM adjustment notice from the current requirement to between 60 and 120 days before the newly adjusted monthly payment is due (see 12 CFR 1026.20(c)). The preamble to the 2013 TILA Servicing Rule explains the reasons for, and identifies research supporting, this change.[4] The revised period is designed to provide borrowers with additional time to adjust their finances or to pursue meaningful alternatives such as refinancing, home sale, loan modification, forbearance, or deed-in-lieu of foreclosure. The preamble to the 2013 TILA Servicing Rule cites research indicating that the Nation's largest mortgage lenders take an average of more than 70 days to complete a refinance. The preamble to the 2013 TILA Servicing Rule also explains that the revised look-back period of 45 days is consistent with the business practices of ARM servicers. The preamble states that most ARM servicers determine the index value from which the new interest rate and payment will be calculated at least 45 days before the date of the interest rate adjustment. Because interest on consumer mortgage credit generally is paid one month in arrears, this means that ARM servicers know the index value approximately 75 days before the due date of the first new payment.

The preamble to the 2013 TILA Servicing Rule notes that some ARMs, including those insured by FHA and guaranteed by the Department of Veterans Affairs (VA), currently have look-back periods that are less than 45 days. Accordingly, the CFPB recognizes that servicers of these ARMs will not be able to comply with the revised notification requirements of 12 CFR 1026.20(c) (see 78 FR 10984). Also, as stated above, FHA's current regulations require at least 25 days' notice before the date the mortgagor's monthly payment would adjust based on the new interest rate. This present notification requirement is inconsistent with the 2013 TILA Servicing Rule requirements that require at least 60 days advance notice of an adjustment to a mortgagor's monthly payment. Since mortgagees originating loans insured by FHA and VA also must comport with the requirements and regulations established by those agencies at the time of origination, the 2013 TILA Servicing Rule ''grandfathers'' ARMs with look-back periods of less than 45 days and originated prior to one year after the effective date of the final rule; i.e., such ARMs originated prior to January 10, 2015 (see 78 FR 10982). This accommodation allows time for HUD to amend its regulation to allow for compliance with the 2013 TILA Servicing Rule.

III. This Proposed Rule

In response to the CFPB's amendments to the interest rate adjustment notification in 12 CFR 1026(c), this rule proposes two changes:

First, FHA proposes to change 24 CFR 203.49(d)(2) to require FHA-approved mortgagees, in setting a new interest rate, to use the current index figure that is the most recent index figure available 45 days (rather than 30 days) before the date of an interest rate adjustment. This change applies to all single family forward FHA-insured ARMs.

Second, FHA proposes to change § 203.49(h), which addresses the disclosure and notification requirements of an interest rate adjustment by the mortgagee to the mortgagor. This proposed rule would require the mortgagee to provide the disclosures and to comply with the timing and notification requirements of the 2013 TILA Servicing Rule at 12 CFR part 1026.

In proposing to revise the look-back period from 30 days to 45 days, and in order to comply with the 2013 TILA Servicing Rule, HUD is required to change its current 30-day look-back period to a period of no less than 45 days. HUD proposes to adopt the minimum period of 45 days, which is also the industry norm.[5] HUD agrees with the CFPB that a period of 45 days would allow a mortgagee to comply with the 60- to 120-day notice to the mortgagor as required in 12 CFR 1026.20(c). Mortgagees holding or servicing an ARM with a 45-day, or longer, look-back period should be able to comply with the requirement to

[4] See 78 FR 10902, at 10924.

[5] See 78 FR 10902, at 10926.

provide earlier notice to the mortgagor. For example, for an ARM with a 45-day look-back period, the notice would be ready 45 days before the interest change date and, with an approximately 30-day billing cycle between the interest change date and the date that the first payment at the new level would be due, the mortgagee could provide the interest rate adjustment notice to the mortgagor approximately 75 days before the new payment was due. Under these circumstances, the mortgagee should be able to comply with the requirement that notice be provided to the mortgagor at least 60 days before the payment at a new interest rate level is due.

While HUD may have adopted a look-back period longer than 45 days, HUD's decision was limited by the servicing timeline described above to provide necessary notification of the adjusted monthly payment within the required 60- to 120-day notification period, which was also required in the 2013 TILA Servicing Rule. Furthermore, if the look-back period was extended beyond 45 days it would create a greater lag time between the relevant index value and the correspondingly adjusted monthly payment. For example, with a 45-day look-back period, if the interest rate change date is September 1, the servicer ''looks back'' 45 days from the adjustment date, which would be July 18. With a look-back period longer than 45 days, the servicer would go back further than July 18 to set the new monthly payment, and the ARM would be less responsive to the current market.

In addition, Ginnie Mae may be unable to pool ARMs with varying look-back periods since different look-back periods have a different response rate to market fluctuation, as illustrated above. A less responsive or more slowly responsive ARM security is a different product from a more responsive security, from a potential investor's viewpoint. By adopting the uniform 45-day look-back period Ginnie Mae may continue to guarantee securities that are backed by pools of mortgages and issued by mortgage lenders.

Finally, it would be less burdensome on servicers for HUD to adopt the industry norm 45-day look-back period, instead of continuing to apply different look-back periods for different ARMs. With different look-back periods, there would assumingly be different servicing timelines and notifications, which could lead to potential errors and reduced customer service. The CFPB also notes that once the grandfather period expires 45-day look-back periods will further dominate the market.

The second proposed revision updates § 203.49(h) to cross-reference the disclosure and notification requirements for interest rate and payment adjustments for ARMs, including the timing, content, and format of such disclosures, contained in the 2013 TILA Servicing Rule at 12 CFR 1026.20(c) and (d). The disclosure requirements of § 1026.20(d) govern the initial rate adjustment of an ARM, while those of § 1026.20(c) govern subsequent rate adjustments. Paragraph (c) of 12 CFR 1026.20 requires the mortgagee of an ARM to provide the mortgagor with disclosures in connection with any adjustment of the interest rate, as required by the loan contract, that results in a corresponding adjustment to the mortgagor's monthly payment. This required disclosure must be provided to the mortgagor at least 60 days, but not more than 120 days, before the first payment at the adjusted level is due.

The cross-references to the TILA requirements not only avoid the repetition of regulatory text, but help to ensure that HUD's codified regulations remain current should the CFPB revise Regulation Z. The alternative of repeating the CFPB regulatory text runs the risk that HUD's regulations may become outdated in the event the CFPB revises the regulatory disclosure and notification requirements, necessitating the need for HUD to undertake potentially time consuming notice and comment rulemaking to update its regulations. In addition to the timing requirements, FHA-approved ARM mortgagees would be required to comply with the requirements of 12 CFR 1026.20(c) governing the content and format of such disclosures. The 2013 TILA Servicing Rule requires specific disclosures, accompanying statements, and tables, including information such as the terms of the mortgagor's ARM, the effective date of the interest rate adjustment and when additional future interest rate adjustments are scheduled to occur, a comparison of the current and new interest rate, and the specific index or formula used in making interest rate adjustments. (For the full list of requirements, see 12 CFR 1026.20(c)(2) and (c)(3).) All such disclosures required under 12 CFR 1026.20(c) must be in the format substantially similar to the sample formats prescribed in the 2013 TILA Servicing Rule, which includes sample formats for such disclosures.[6]

As noted, 12 CFR 1026.20(d) establishes separate disclosure requirements for the initial rate adjustment of an ARM with an initial interest rate that is constant for more than one year. The first time the interest rate adjusts the monthly payment of an FHA-insured ARM, the mortgagee would be required to provide the appropriate disclosures to the mortgagor at least 210, but not more than 240, days before the first payment at the adjusted level is due.[7] If the new interest rate (or the new payment calculated from the new interest rate) is not known as of the date of the disclosure, an estimate shall be disclosed and labeled as such for the mortgagor. This estimate shall be based on the calculation of the specific index or formula used in making the interest rate adjustment within 15 business days prior to the date of the disclosure.

The required content and format of the initial disclosures are contained in 12 CFR 1026.20(d)(2). These disclosures, accompanying explanatory statements, and tables include information such as an explanation of the terms of the mortgagor's ARM; a comparison of the current and new interest rates; the telephone number of the mortgagee for the mortgagor to call if they anticipate not being able to make their new payments; a list of alternatives to paying at the new rate that the mortgagor may be able to pursue and a brief explanation of each alternative, expressed in simple and clear terms; the Web site to access either the CFPB's or HUD's list of homeownership counselors and counseling organizations; and the toll-free telephone number to access the HUD list of homeownership counselors and counseling organizations. All such disclosures required under 12 CFR 1026.20(d) must be in the format substantially similar to that prescribed by the 2013 TILA Servicing Rule, which includes sample formats for such disclosures.[8]

The initial disclosure requirements of 12 CFR 1026.20(d) do not apply to ARMs with a term where the interest rate would adjust within a 1-year period (see 12 CFR 1026.20(d)(1)(ii)). FHA does not insure ARMs with a term of less than 12 months. The HUD regulation at

[6] The disclosures required by 12 CFR 1026.20(c) shall be provided in the form of a table and in the same order as, and with headings and format substantially similar to, forms H–4(D)(1) and (2) in appendix H of the 2013 TILA Servicing Rule (78 FR 11009–11010).

[7] The 2013 TILA Serving Rule also provides, at 12 CFR 1026.20(d), that if the first payment at the adjusted level is due within the first 210 days after consummation, the initial disclosure shall be provided at consummation. This provision does not apply to FHA since, as more fully discussed below in this preamble, ARMs with terms of less than 12 months are not eligible for FHA insurance.

[8] The disclosures required by 12 CFR 1026.20(d) shall be provided in the form of a table and in the same order as, and with headings and format substantially similar to, forms H–4(D)(3) and (4) in appendix H of the TILA Servicing Rule (78 FR 11011–11012).

24 CFR 203.49(d) describes the frequency of rate changes for ARMs eligible for FHA insurance, providing that ''. . . the first adjustment shall be no sooner or later than . . .'' as provided in the regulation. The shortest term ARM eligible for FHA insurance is a 1-year ARM with the first rate adjustment occurring no earlier than 12 months. Accordingly, the exemption provided by the 2013 TILA Servicing Rule is not applicable to FHA-insured ARMs.

IV. 30 Day Public Comment Period

In accordance with HUD's regulations concerning rulemaking at 24 CFR part 10 (entitled, ''Rulemaking Policy and Procedures''), it is HUD's policy that the public comment period for proposed rules should be 60 days. In the case of this proposed rule, however, HUD has determined there is good cause to reduce the public comment period to 30 days for the following reasons:

First, HUD is required by the 2013 TILA Servicing Rule to make regulatory changes to comply with the 2013 TILA Servicing Rule. The CFPB delayed the effective date of the notification period for FHA-insured ARMs to January 10, 2015, and this allows HUD to go through the rulemaking process to bring FHA's regulations in conformity with the 2013 TILA Servicing Rule.

Second, the notification requirements established in the 2013 TILA Servicing Rule were published in the **Federal Register** on February 14, 2013, and became effective on January 10, 2014, except for adjustable rate mortgages with look-back periods currently less than 45 days, including FHA-insured and VA-guaranteed ARMs, which are grandfathered until January 10, 2015. Since the industry and interested parties were notified of these regulatory changes, including a statement in the preamble of the rule that directed HUD to revise its regulations to comply with that of the 2013 TILA Servicing Rule, industry and interested parties have been on notice of HUD's proposed changes well before the publication of this proposed rule.

Given that the proposed amendments to HUD's regulations mirror the requirements of the 2013 TILA Servicing Rule, and the January 10, 2015, deadline, HUD believes that good cause exists to reduce the public comment period to 30 days. All comments received during the 30-day public comment period will be considered in the development of the final rule.

V. Findings and Certifications

Regulatory Review—Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are ''outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.'' Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public.

As discussed above in this preamble, the proposed rule would align the look-back requirements for FHA-insured ARMs to the revised TILA notification requirements established in the 2013 TILA Servicing Rule. Consistent with the goals of Executive Order 13563, the proposed amendments would simplify and standardize the ARM look-back and notification requirements established by the CFPB and in effect for the conventional ARM market on January 10, 2014. As a result, this rule was determined to not be a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and therefore was not reviewed by OMB.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

As discussed in this preamble, this proposed rule aligns the look-back requirements for FHA-insured ARMs to the revised TILA notification requirements established in the 2013 TILA Servicing Rule. HUD does not have the discretion not to align its ARM notification requirements with new TILA requirements established by the CFPB as implemented in its 2013 TILA Servicing Rule. The revised look-back period and disclosure requirements would apply to FHA-approved mortgagees originating ARMs in January 2015, whether or not HUD takes action. It is HUD's position that it is important for FHA regulations to be in compliance with TILA, and therefore HUD has initiated this rulemaking. In this rule, HUD proposes to adopt the minimum look-back period, 45 days, which would allow FHA-approved mortgagees to meet the TILA minimum requirements governing notification to borrowers.

As also discussed in this preamble, the CFPB noted in its rulemaking, that the majority of ARMs in the conventional market have look-back periods of 45 days or longer. With the 2013 TILA Servicing Rule taking effect on January 10, 2014, any lenders originating in the conventional market ARMs that did not have a minimum look-back period of 45 days, have now adjusted to the new TILA requirements.

As with the proposed changes regarding the look-back period, the revisions to the disclosure requirements simply conform HUD requirements to the 2013 TILA Servicing Rule and the procedures currently followed in the conventional mortgage lending market.

For the reasons presented, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities. Notwithstanding HUD's determination that this rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding less burdensome alternatives to this rule that will meet HUD's objectives as described in the preamble to this rule.

Environmental Impact

The proposed rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either (i) imposes substantial direct compliance costs on state and local governments and is not required by statute, or (ii) preempts state law, unless the agency meets the consultation and funding

requirements of section 6 of the Executive order. This proposed rule would not have federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This proposed rule would not impose any Federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for Mortgage Insurance-Homes is 14.117.

List of Subjects in 24 CFR Part 203

Hawaiian natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

Accordingly, for the reasons discussed in this preamble, HUD proposes to amend 24 CFR part 203 as follows:

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

■ 1. The authority citation for 24 CFR part 203 continues to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b, 1715z–16, 1715u, and 1717z–21; 42 U.S.C. 3535(d).

■ 2. Revise the third sentence of paragraph (d)(2) and paragraph (h) to read as follows:

§ 203.49 Eligibility of adjustable rate mortgages.

* * * * *

(d) * * *

(2) * * * The current index figure shall be the most recent index figure available 30 days before the date of each interest rate adjustment, except that for forward mortgages originated on or after [*effective date of final rule to be inserted at final rule stage*], 30 days shall mean 45 days.

* * * * *

(h) *Disclosures.* The mortgagee of an adjustable rate mortgage shall provide mortgagors with the disclosures in the timing, content, and format required by the regulations implementing the Truth in Lending Act (15 U.S.C. 1601 *et seq.*) at 12 CFR 1026.20(c) and (d).

* * * * *

Dated: April 17, 2014.

Carol J. Galante,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2014–10572 Filed 5–7–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 197

[Docket ID: DOD–2013–OS–0108]

RIN 0790–AJ07

Historical Research in the Files of the Office of the Secretary of Defense (OSD)

AGENCY: Department of Defense.

ACTION: Proposed rule.

SUMMARY: This proposed rule updates and clarifies procedures regarding the review and accessibility to records and information in the custody of the Secretary of Defense and the OSD Components. The purpose of this rule is to provide such guidance to former Cabinet level officials and former Presidential appointees (FPAs), including their personnel, aides, and official researchers.

This rule is part of DoD's retrospective plan, completed in August 2011, under Executive Order 13563, ''Improving Regulation and Regulatory Review.'' DoD's full plan and updates can be accessed at: *http://exchange.regulations.gov/exchange/topic/eo-13563.*

DATES: Comments must be received by July 7, 2014.

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number or RIN for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald R. McCully, 571–372–0473.

SUPPLEMENTARY INFORMATION:

Executive Summary

I. Purpose of the Regulatory Action

a. The Office of the Secretary of Defense (OSD) is issuing a proposed rule that would update Part 197 of Title 32, Code of Federal Regulations. This proposed rule updates and clarifies procedures regarding the review and accessibility to records and information in the custody of the Secretary of Defense and the OSD Components. The purpose of this rule is to provide such guidance to former Cabinet level officials and former Presidential appointees (FPAs), including their personnel, aides, and official researchers.

b. In accordance with Title 5 of the United States Code, ''Government Organization and Employees,'' this rule updates procedures for the programs that permit authorized personnel to perform historical research in records created by or in the custody of Office of the Secretary of Defense and its components consistent with federal regulations.

II. Summary of the Major Provisions of the Regulatory Action in Question

This proposed rule updates and clarifies procedures regarding the review and accessibility to records and information in the custody of the Secretary of Defense and the OSD Components. The purpose of this rule is to provide such guidance to former Cabinet level officials and former Presidential appointees (FPAs), including their personnel, aides, and official researchers.

1. Explanation of FOIA Exemptions and Classification Categories

Explanation of restrictions applicable to the public's request for information within OSD files.

2. Responsibilities

Outlines the responsibilities of Director of Administration and Management (D&AM); OSD Records Administrator, and the OSD Components.

3. Procedures for Historical Researchers Permanently Assigned Within the Executive Branch Working on Official Projects

Updates and outlines procedures for access to information held within OSD files for historical research.

4. Procedures for the Department of State (DoS) Foreign Relations of the United States (FRUS) Series

Updates and outlines for official researchers of the DOS to access information within OSD Files.

5. Procedures for Historical Researchers Not Permanently Assigned to the Executive Branch

Updates and outlines procedures for Non DoD and executive branch personnel to access information within OSD files for historical research.

6. Procedures for Document Review for the FRUS Series

Updates and outlines procedures for reviewing FRUS information within OSD files for historical research.

7. Procedures for Copying Documents

Updates and outlines procedures for copying information within OSD files for historical research.

8. General Guidelines for Researching OSD Records

Updates and outlines procedures for researching information within OSD files for historical research.

9. General Guidelines for Researching OSD Records

Updates and outlines guidelines applicable to researchers while reviewing OSD files.

III. Costs and Benefits

Annual yearly cost vary and are dependent on the number of researchers requesting access to DoD owned information, the volume of information requiring review and/or declassification and other operational constraints within a given FY.

Cost: Cost estimates use actual data for 2012 per hour. Cost is aggregated based on average rank (military), grade (civilian) and time in service for personnel qualified for oversight of researchers within the Washington-Baltimore-Northern Virginia, DC-MD-VA-WV-PA area.

Military = Rank 05 with 10+ years of time in service.

Civilian = Grade GS–13, Step 5+ with minimum 5 years of time in service.

Military = $39.77 per hour.

Civilian = $48.51 per hour.

Benefit: This allows the government to assert positive control over access to classified and unclassified information requested for research purposes. DoD information intended for public release that pertains to military matters, national security issues, or subjects of significant concern to the DoD shall be reviewed for clearance prior to release.

Regulatory Procedures

Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''significant regulatory action,'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB).

Unfunded Mandates Reform Act (Sec. 202, Pub. L. 104–4)

This rule does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

This rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

This rule does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

Executive Order 13132, ''Federalism''

This rule does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

(1) The States;

(2) The relationship between the National Government and the States; or

(3) The distribution of power and responsibilities among the various levels of Government.

List of Subjects in 32 CFR Part 197

Historical records, Research.

■ Accordingly, 32 CFR part 197 is proposed to be revised to read as follows:

PART 197—HISTORICAL RESEARCH IN THE FILES OF THE OFFICE OF THE SECRETARY OF DEFENSE (OSD)

Sec.

Authority: 5 U.S.C. 301, Executive Order 13526, 5 U.S.C. 552b, and Pub. L. 102–138.

§ 197.1 Purpose.

(a) This part, in accordance with the authority in DoD Directive 5110.4, ''Washington Headquarters Services'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/511004p.pdf*), implements policy and updates procedures for the programs that permit authorized personnel to perform historical research in records created by or in the custody of Office of the Secretary of Defense (OSD) consistent with Executive Order 13526; DoD Manual 5230.30, ''DoD Mandatory Declassification Review (MDR) Program'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/523030m.pdf*); 32 CFR part 286; 32 CFR part 310; DoD Manual 5200.01, ''DoD Information Security Program'' Volumes 1–4 (available at *http://www.dtic.mil/whs/directives/corres/pdf/520001_vol1.pdf, http://www.dtic.mil/whs/directives/corres/pdf/520001_vol2.pdf, http://www.dtic.mil/whs/directives/corres/pdf/520001_vol3.pdf,* and *http://www.dtic.mil/whs/directives/corres/pdf/520001_vol4.pdf*); 36 CFR 1230.10 and 36 CFR part 1236; DoD Directive 5230.09, ''Clearance of DoD Information for Public Release'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/523009p.pdf*); and 32 CFR 197.5.

(b) Reserved.

§ 197.2 Applicability.

This part applies to:

(a) The Office of the Secretary of Defense, the Defense Agencies, and the DoD Field Activities in the National Capital Region that are serviced by Washington Headquarters Services (WHS) (referred to collectively in this part as the ''WHS-Serviced Components'').

(b) All historical researchers as defined in § 197.3.

(c) Cabinet Level Officials, Former Presidential Appointees (FPAs) to

include their personnel, aides and researchers, seeking access to records containing information they originated, reviewed, signed, or received while serving in an official capacity.

§ 197.3 Definitions.

The following definitions shall apply to this part:

Access. The availability of or the permission to consult records, archives, or manuscripts. The ability and opportunity to obtain classified, unclassified, or administratively controlled information or records.

Electronic records. Records stored in a form that only a computer can process and satisfies the definition of a federal record, also referred to as machine-readable records or automatic data processing records (including email).

Historical researcher or requestor. A person approved to conduct research in OSD files for historical information to use in a DoD approved project (e.g., agency historical office projects, books, articles, studies, or reports), regardless of the person's employment status. Excluded are Military personnel assigned to OSD; OSD employees, contractors, and students conducting research in response to academic requirements.

Records (also referred to as federal records or official records). All books, papers, maps, photographs, machine-readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the U.S. Government under federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the U.S. Government or because of the informational value of data in them.

§ 197.4 Policy.

(a) Pursuant to Executive Order 13526, anyone requesting access to classified material must possess the requisite security clearance.

(b) Members of the public seeking the declassification of DoD documents under the provisions of section 3.5 of Executive Order 13526 will contact the appropriate OSD Component as listed in DoD Manual 5230.30.

(c) Records and information requested by FPA and approved historical researchers will be accessed at a facility under the control of the National Archives and Records Administration (NARA), NARA's Archives II in College Park, Maryland, a Presidential library, or an appropriate U.S. military facility or a DoD activity.

(d) Access to records and information will be limited to the specific records within the scope of the proposed research request over which OSD has authority and to any other records for which the written consent of other agencies with authority has been granted.

(e) Access to unclassified OSD Component records and information will be permitted consistent with the restrictions of the exemptions of 5 U.S.C. 552(b) (also known and referred to in this part as the ''Freedom of Information Act'' (FOIA)), 32 CFR part 286, Appendix A of this part, and consistent with 32 CFR part 310. The procedures for access to classified information will be used if the requested unclassified information is contained in OSD files whose overall markings are classified.

(f) Except as otherwise provided in DoD Manual 5200.01 volume 3, no person may have access to classified information unless that person has been determined to be trustworthy and access is essential to the accomplishment of a lawful and authorized purpose.

(g) Persons outside the Executive Branch who are engaged in approved historical research projects may be granted access to classified information, consistent with the provisions of Executive Order 13526 and DoD Manual 5200.01 volume 1 provided that the OSD official with classification jurisdiction over that information grants access.

(h) Contractors working for Executive Branch agencies may be allowed access to classified OSD Component files provided the contractors meet all the required criteria for such access as an historical researcher including the appropriate level of personnel security clearance set forth in paragraphs (a) and (i) of this section. No copies of OSD records and information may be released directly to the contractors. The Washington Headquarters Services Records and Declassification Division (WHS/RDD) will be responsible for ensuring that the contractor safeguards the documents and the information is only used for the project for which it was requested.

(i) All DoD-employed requesters, to include DoD contractors, must have critical nuclear weapons design information (CNWDI) to access CNWDI information. All other non DoD and non-Executive Branch personnel must have a Department of Energy-issued ''Q'' clearance to access CNWDI information.

(j) The removal of federal records and information from OSD custody is not authorized; this includes copies and email according to 36 CFR 1230.10. Copies of records and information that are national security classified will remain under the control of the agency.

(k) Access for FPAs is limited to records they originated, reviewed, signed, or received while serving as Presidential appointees, unless there is another basis for providing access.

(l) Authorization is required from all agencies whose classified information is, or is expected to be, in the requested files prior to granting approval for access. Separate authorizations for access to records and information maintained in OSD Component office files or at the federal records centers will not be required.

§ 197.5 Responsibilities.

(a) The Director of Administration and Management (DA&M), or designee, is the approval authority for access to DoD information in OSD Component files and in files at the National Archives, Presidential libraries, and other similar institutions in accordance with DoD Directive 5110.4 and DoD Manual 5230.30.

(b) Under the authority, direction, and control of the DA&M, the OSD Records Administrator:

(1) Exercises approval authority for research access to OSD and WHS Serviced Components records, information, and the Historical Research Program.

(2) Maintains records necessary to process and monitor each case.

(3) Obtains all required authorizations.

(4) Obtains, when warranted, the legal opinion of the General Counsel of the Department of Defense regarding the requested access.

(5) Coordinates, with the originator, on the public release review on documents selected by the researchers for use in unclassified projects in accordance with DoD Directive 5230.09 and DoD Instruction 5230.29, ''Security and Policy Review of DoD Information for Public Release'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/523029p.pdf*).

(6) Coordinates requests with the OSD Historian.

(7) Provides prospective researchers the procedures necessary for requesting access to OSD Component files.

(c) The WHS-serviced Components heads, when requested:

(1) Determine whether access is for a lawful and authorized government purpose or in the interest of national security.

(2) Determine whether the specific records requested are within the scope of the proposed historical research.

(3) Determine the location of the requested records.

(4) Provide a point of contact to the OSD Records Administrator.

§ 197.6 Procedures.

(a) *Procedures for Historical Researchers Permanently Assigned Within the Executive Branch Working on Official Projects.* (1) In accordance with 32 CFR 197.5, the WHS-serviced Components heads, when requested, will:

(i) Make a written determination that the requested access is essential to the accomplishment of a lawful and authorized U.S. Government purpose, stating whether the requested records can be made available. If disapproved, cite specific reasons.

(ii) Provide the location of the requested records, including accession and box numbers if the material has been retired to the Washington National Records Center (WNRC).

(iii) Provide a point of contact for liaison with the OSD Records Administrator if any requested records are located in OSD Component working files.

(2) The historical researcher or requestor will:

(i) Submit a request for access to OSD files to: OSD Records Administrator, WHS/Records and Declassification Division, 4800 Mark Center Drive, Suite 02F09–02, Alexandria, VA 22350–3100.

(ii) All requests must be signed by an appropriate official and must contain:

(A) The name(s) of the researcher(s) and any assistant(s), level of security clearance, and the federal agency, institute, or company to which the researcher is assigned.

(B) A statement on the purpose of the project, including whether the final product is to be classified or unclassified.

(C) An explicit description of the information being requested and, if known, the originating office, so that the identification and location of the information may be facilitated.

(D) Appropriate higher authorization of the request.

(E) Ensure researcher's security manager or personnel security office verifies his or her security clearances in writing to the OSD Records Administrator's Security Manager.

(iii) Maintain the file integrity of the records being reviewed, ensuring that no records are removed and that all folders are replaced in the correct box in their proper order.

(iv) Make copies of any documents pertinent to the project, ensuring that staples are carefully removed and that the documents are re-stapled before they are replaced in the folder.

(v) Submit the completed manuscript for review prior to public presentation or publication to: WHS/Chief, Security Review Division, Office of Security Review, 1155 Defense Pentagon, Washington, DC 20301–1155.

(vi) If the requester is an official historian of a federal agency requiring access to DoD records at the National Archives facilities or a Presidential library, the requested must be addressed directly to the pertinent facility with an information copy sent to the OSD Records Administrator. The historian's security clearances must be verified to the National Archives or the Presidential library.

(3) The use of computers, laptops, computer tablets, personal digital assistants, recorders, or similar devices listed in § 197.6(f) of this part is prohibited. Researchers will use letter-sized paper (approximately 8½ by 11 inches), writing on only one side of the page. Each page of notes must pertain to only one document.

(4) The following applies to all notes taken during research:

(i) All notes are considered classified at the level of the document from which they were taken.

(ii) Indicate at the top of each page of notes the document:

(A) Originator.

(B) Date.

(C) Subject (if the subject is classified, indicate the classification).

(D) Folder number or other identification.

(E) Accession number and box number in which the document was found.

(F) Security classification of the document.

(iii) Number each page of notes consecutively.

(iv) Leave the last 1½ inches on the bottom of each page of notes blank for use by the reviewing agencies.

(v) Ensure the notes are legible, in English, and in black ink.

(vi) All notes must be given to the staff at the end of each day. The facility staff will forward the notes to the OSD Records Administrator for an official review and release to the researcher.

(5) The OSD Records Administrator will:

(i) Process all requests from Executive Branch employees requesting access to OSD Component files for official projects.

(ii) Determine which OSD Component originated the requested records and, if necessary, request an access determination from the OSD Component and the location of the requested records, including but not limited to electronic information systems, databases or accession number and box numbers if the hardcopy records have been retired offsite.

(iii) Request authorization for access from other OSD Component as necessary.

(A) Official historians employed by federal agencies may have access to the classified information of any other agency found in DoD files, as long as authorization for access has been obtained from these agencies.

(B) If the requester is not an official historian, authorization for access must be obtained from the Central Intelligence Agency (CIA), National Security Council (NSC), Department of State (DOS), and any other non-DoD agency whose classified information is expected to be found in the files to be accessed.

(iv) Make a written determination as to the researcher's trustworthiness based on the researcher having been issued a security clearance.

(v) Compile all information on the request for access to classified information, to include evidence of an appropriately issued personnel security clearance, and forward the information to the DA&M, OSD Component or designee, who will make the access determination.

(vi) Notify the researcher of the authorization and conditions for access to the requested records or of the denial of access and the reason(s).

(vii) Ensure that all conditions for access and release of information for use in the project are met.

(viii) Make all necessary arrangements for the researcher to visit the review location and review the requested records.

(ix) Provide all requested records and information under OSD control in electronic formats consistent with 36 CFR part 1236. For all other information, a staff member will be assigned to supervise the researcher's copying of pertinent documents at the assigned facility.

(x) If the records are maintained in the OSD Component's working files, arrange for the material to be converted to electronic format for the researchers to review.

(xi) Notify the National Archives, Presidential library, or military facility of the authorization and access conditions of all researchers approved to research OSD records held in those facilities.

(b) *Procedures for the DOS Foreign Relations of the United States (FRUS) series.* (1) The DOS historians will:

(i) Submit requests for access to OSD files. The request should list the names and security clearances for the

historians doing the research and an explicit description, including the accession and box numbers, of the files being requested. Submit request to: OSD Records Administrator, WHS/Records and Declassification Division, 4800 Mark Center Dr., Suite 02F09–02, Alexandria, VA 22380–2100.

(ii) Submit to the OSD Records Administrator requests for access for members of the Advisory Committee on Historical Diplomatic Documentation to documents copied by the DOS historians for the series or the files reviewed to obtain the documents.

(iii) Request that the DOS Diplomatic Security staff verify all security clearances in writing to the OSD Records Administrator's Security Manager.

(iv) Give all document copies to the OSD Records Administrator staff member who is supervising the copying as they are made.

(v) Submit any OSD documents desired for use or pages of the manuscript containing OSD classified information for declassification review prior to publication to the Chief, Security Review Division at: WHS/Chief, Security Review Division, Office of Security Review, 1155 Defense Pentagon, Washington, DC 20301–1155.

(2) The OSD Records Administrator will:

(i) Determine the location of the records being requested by the DOS for the FRUS series according to Title IV of Public Law 102–138, ''The Foreign Relations of the United States Historical Series.''

(ii) Act as a liaison with the CIA, NSC, and any other non-OSD agency for access by DOS historians to records and information and such non-DoD agency classified information expected to be interfiled with the requested OSD records.

(iii) Obtain written verification from the DOS Diplomatic Security staff of all security clearances, including ''Q'' clearances.

(iv) Make all necessary arrangements for the DOS historians to access, review, and copy documents selected for use in their research in accordance with procedures in accordance with § 197.6(a) of this part.

(v) Provide a staff member to supervise document copying in accordance with the guidance provided in § 197.6(d) of this part.

(vi) Compile a list of the documents that were copied by the DOS historians.

(vii) Scan and transfer copies to DOS in NARA an approved electronic format.

(viii) Submit to the respective agency a list of CIA and NSC documents copied and released to the DOS historians.

(ix) Process DOS Historian Office requests for members of the Advisory Committee on Historical Diplomatic Documentation with appropriate security clearances to have access to documents copied and used by the DOS historians to compile the FRUS series volumes or to the files that were reviewed to obtain the copied documents. Make all necessary arrangements for the Advisory Committee to review any documents that are at the WNRC.

(c) *Procedures for Historical Researchers not Permanently Assigned to the Executive Branch.*

(1) The WHS-serviced Components heads, when required, will:

(i) Recommend to the DA&M, or his or her designee, approval or disapproval of requests to access OSD information. State whether access to, release, and clearance of the requested information is in the interest of national security and whether the information can be made available. If disapproval is recommended, specific reasons should be cited.

(ii) Provide the location of the requested information, including but not limited to the office, component, information system or accession and box numbers for any records that have been retired to the WNRC.

(iii) Provide a point of contact for liaison with the OSD Records Administrator if any requested records are located in OSD Component working files.

(2) The OSD Records Administrator will:

(i) Process all requests from non-Executive Branch researchers for access to OSD or WHS-serviced Components files. Certify via the WHS Security Officer that the requester has the appropriate clearances.

(ii) Determine which OSD Component originated the requested records and, as necessary, obtain written recommendations for the research to review the classified information.

(iii) Obtain prior authorization to review their classified information from the DOS, CIA, NSC, and any other agency whose classified information is expected to be interfiled with OSD records.

(iv) Obtain agreement from the researcher(s) and any assistant(s) that they will comply with conditions governing access to the classified information (see Figure 1).

BILLING CODE 5001–06–P

Figure 1. Form Letter – Conditions Governing Access to Official Records for Historical Research Purposes

(LETTERHEAD STATIONERY)

Date:

OSD Records Administrator

WHS/Records and Declassification Division

4800 Mark Center Drive

Suite 02F09-02

Alexandria Va 22350-3100

To Whom It May Concern:

I understand that the information to which I have requested access for historical research purposes may include information concerning the national defense or foreign relations of the United States. Unauthorized disclosure could reasonably be expected to cause damage, serious damage, or exceptionally grave damage to the national security regardless of the classification of that information. If granted access, I therefore agree to the following conditions governing access to OSD files:

1. I will abide by any rules and restrictions issued in your letter of authorization, including those of other agencies whose information is interfiled with that of the OSD.

2. I agree to safeguard the classified information to which I gain possession or knowledge in a manner consistent with Part 4 of Executive Order 13526, "Classified National Security Information," and the applicable provisions of the DoD issuances concerning safeguarding classified information, including DoD Instruction 5200.01, "DoD Information Security Program and Protection of Sensitive Compartmented Information."

3. I agree not to reveal to any person or agency any information obtained as a result of this access except as authorized in the terms of your authorization letter or a follow-on letter. I further agree that I will not use the information for purposes other than those set forth in my request for access.

4. I agree to submit my research notes to determine if classified information is contained in them before their removal from the specific area assigned to me for research. I further agree to submit my manuscript for a security review before its publication or presentation. In each of these reviews, I agree to comply with any decision of the reviewing official in the interests of the security of the United States, including the retention or deletion of any classified parts of such notes and manuscript whenever the federal agency concerned deems such retention or deletion necessary.

5. I understand that failure to abide by the conditions in this statement constitutes sufficient cause for canceling my access to OSD information and for denying me any future access and may subject me to criminal provisions of federal law as referred to in paragraph 6.

6. I have been informed that provisions of Title 18 of the United States Code impose criminal penalties, under certain circumstances, for the unauthorized disclosure, loss, copying, or destruction of defense information.

7. Removal Subject to a Nondisclosure Agreement. Cabinet Level officials may remove copies of unclassified information and/or materials not previously released to the public or with clearly identified restrictions upon request of the departing official if he or she signs a non-disclosure agreement. The former official must agree not to release or publish the information, orally or in writings (paper or electronically), without the written approval of the DoD. Upon request by the Cabinet level official, the DoD will perform an official review of the information. The review may result in possible denial or redaction of the information. The Director of Administration and Management will serve as the appellate authority to any denials or redactions that may be contested.

Signature

THIS STATEMENT IS MADE TO THE UNITED STATES GOVERNMENT TO ENABLE IT TO EXERCISE ITS RESPONSIBILITY FOR THE PROTECTION OF INFORMATION AFFECTING THE NATIONAL SECURITY. I UNDERSTAND THAT ANY MATERIAL FALSE STATEMENT THAT I MAKE KNOWINGLY AND WILLFULLY SHALL SUBJECT ME TO THE PENALTIES OF TITLE 18, U.S. CODE, SECTION 1001.

BILLING CODE 5001–06–C

(v) If the requester is an FPA, submit a memorandum after completion of the actions described in this section to WHS, Human Resources Directorate,

Security Operations Division, requesting the issuance (including an interim) or reinstatement of an inactive security clearance for the FPA and any assistant and a copy of any signed form letters. The Security Division will contact the researcher(s) and any assistant(s) to obtain the forms required to reinstate or initiate the personnel security investigation to obtain a security clearance. Upon completion of the adjudication process, notify the OSD Records Administrator in writing of the reinstatement, issuance, or denial of a security clearance.

(vi) Make a written determination as to the researcher's trustworthiness based on his or her having been issued a security clearance.

(vii) Compile all information on the request for access to classified information, to include either evidence of an appropriately issued or reinstated personnel security clearance. Forward the information to the DA&M or designee, who will make the final determination on the applicant's eligibility for access to classified OSD or WHS-serviced Component files. If the determination is favorable, the DA&M or designee will then execute an authorization for access, which will be valid for not more than 2 years.

(viii) Notify the researcher of the approval or disapproval of the request. If the request has been approved, the notification will identify the files authorized for review and specify that the authorization:

(A) Is approved for a predetermined time period.

(B) Is limited to the designated files.

(C) Does not include access to records and/or information of other federal agencies, unless such access has been specifically authorized by those agencies.

(ix) Make all necessary arrangements for the researcher to visit the WNRC and review any requested records that have been retired there, to include written authorization, conditions for the access, and a copy of the security clearance verification.

(x) If the requested records are at the WNRC, make all necessary arrangements for the scanning of documents.

(xi) If the requested records are maintained in OSD or WHS-serviced Component working files, make arrangements for the researcher to review the requested information and, if authorized, copy pertinent documents in the OSD or WHS-serviced Component's office. Provide the OSD Component with a copy of the written authorization and conditions under which the access is permitted.

(xii) Compile a list of all the documents requested by the researcher.

(xiii) Coordinate the official review on all notes taken and documents copied by the researcher.

(xiv) If the classified information to be reviewed is on file at the National Archives, a Presidential library, or other facility, notify the pertinent facility in writing of the authorization and conditions for access.

(3) The researcher will:

(i) Submit a request for access to OSD Component files to OSD Records Administrator, WHS/Records and Declassification Division, 4800 Mark Center Drive, Suite 02F09–02, Alexandria VA 22350–3100. The request must contain:

(A) As explicit a description as possible of the information being requested so that identification and location of the information may be facilitated.

(B) A statement as to how the information will be used, including whether the final project is to be classified or unclassified.

(C) A statement as to whether the researcher has a security clearance, including the level of clearance and the name of the issuing agency.

(D) The names of any persons who will be assisting the researcher with the project. If the assistants have security clearances, provide the level of clearance and the name of the issuing agency.

(E) A signed copy of their agreement (see Figure) to safeguard the information and to authorize a review of any notes and manuscript for a determination that they contain no classified information. Each project assistant must also sign a copy of the letter.

(F) The forms necessary to obtain a security clearance, if the requester is an FPA without an active security clearance. Each project assistant without an active security clearance will also need to complete these forms. If the FPA or assistant have current security clearances, their personnel security office must provide verification in writing to the OSD Records Administrator's Security Manager.

(ii) Maintain the integrity of the files being reviewed, ensuring that no records are removed and that all folders are replaced in the correct box in their proper order.

(iii) If copies are authorized, give all copies to the custodian of the files at the end of each day. The custodian will forward the copies of the documents to the OSD Records Administrator for a declassification review and release to the requester.

(A) For records at the WNRC, if authorized, provide the requested information in an electronic format. Review will occur only in the presence of an OSD Records Administrator staff member.

(B) Ensure that all staples are carefully removed and that the documents are re-stapled before the documents are replaced in the folder.

(C) Submit all classified and unclassified notes made from the records to the custodian of the files at the end of each day of research. The custodian will transmit the notes to the OSD Records Administrator for an official review and release to the researcher at the completion of researcher's project.

(D) Submit the final manuscript to the OSD Records Administrator for forwarding to the Chief, Security Review Division, Office of Security Review, for a security review and public release clearance in accordance with DoD Directive 5230.09 and DoD 5220.22–M, ''National Industrial Security Program Operating Manual (NISPOM)'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/522022m.pdf*) prior to publication, presentation, or any other public use.

(d) *Procedures for Document Review for the FRUS Series.* (1) When documents are being reviewed, a WHS/RDD staff member must be present at all times.

(2) The records maybe reviewed at a Presidential library, Archives II, College Park Maryland, WNRC, Suitland, Maryland, or an appropriate military facility. All requested information will remain under the control of the WHS/RDD staff until a public release review is completed, and then provided in electronic formats.

(3) If the requested records have been reviewed in accordance with the automatic declassification provisions of Executive Order 13526, any tabs removed during the research and copying must be replaced in accordance with DoD Manual 5200.01 volume 2.

(4) The number of boxes to be reviewed will determine which of the following procedures will apply. The WHS/RDD staff member will make that determination at the time the request is processed. When the historian completes the review of the boxes, he or she must contact the WHS/RDD to establish a final schedule for scanning the documents. To avoid a possible delay, a tentative schedule will be established at the time that the review schedule is set.

(i) For 24 boxes or fewer, review and scanning will take place

simultaneously. Estimated time to complete scanning is 7 work days.

(ii) For 25 boxes or more, the historian will review the boxes and mark the documents that are to be scanned using WHS/RDD authorized reproduction tabs.

(iii) If the review occurs at facilities that OSD does not control ownership of the document, the documents must be given to the WHS/RDD staff member for transmittal for processing.

(5) WHS/RDD will notify the historian when the documents are ready to be picked up. All administrative procedures for classified material transfers will be followed in accordance with DoD Manual 5200.01 volume 1 and DoD 5220.22–M and appropriate receipt for unclassified information will be used.

(e) *Procedures for Copying Documents.* (1) The records will be reviewed and copied at a Presidential library, Archives II, College Park Maryland, WNRC, Suitland, Maryland, or an appropriate U.S. military facility.

(2) If the requested records have been reviewed in accordance with the automatic declassification provisions of Executive Order 13526 any tabs removed during the research and copying must be replaced in accordance with DoD Manual 5200.01 volume 2.

(3) The researcher will mark the documents that he or she wants to copy using WHS/RDD authorized reproduction tabs.

(4) Any notes taken during the review process must be given to the WHS/RDD staff member present for transmittal to the WHS/RDD.

(5) All reproduction charges are to the responsibility of the researcher.

(6) All documents requested will be copied to an approved electronic format by WHS/RDD staff after official review.

(i) The researcher will need to bring paper, staples, staple remover, and stapler.

(ii) When the researcher completes the review of the boxes, he or she must contact the WHS/RDD to establish a final schedule for scanning the requested documents.

(iii) When the documents are scanned, the WHS/RDD will notify the researcher.

(iv) All questions pertaining to the review, copying, or transmittal of OSD documents must be addressed to the WHS/RDD staff member.

(f) *General Guidelines for Researching DoD Records.*

DoD records and information are unique and often cannot be replaced should they be lost or damaged. In order to protect its collections and archives, the OSD Records Administrator has set rules that researchers must follow.

(1) Researchers will work in room assigned. Researchers are not allowed in restricted areas.

(2) Special care must be taken in handling all records. Records may not be leaned on, written on, folded, traced from, or handled in any way likely to damage them.

(3) Records should be kept in the same order in which they are presented.

(4) Items that may not be brought into these research areas include, but are not limited to:

(i) Briefcases.

(ii) Cases for equipment (laptop computers).

(iii) Computers. This includes laptops, tablet computers, personal digital assistants, smart phones, and other similar devices.

(iv) Cellular phones.

(v) Computer peripherals including handheld document scanners and digital or analog cameras.

(vi) Containers larger than 9.5″ x 6.25″ (e.g., paper bags, boxes, backpacks, shopping bags, and sleeping bags).

(vii) Food, drinks (includes bottled water) and cigarettes, cigars, or pipes.

(viii) Handbags or purses larger than 9.5″ x 6.25″.

(ix) Luggage.

(x) Musical instruments and their cases.

(xi) Newspapers.

(xii) Outerwear (e.g., raincoats and overcoats).

(xiii) Pets (exception for service animals, i.e., any guide dog or signal dog that is trained to provide a service to a person with a disability).

(xiv) Scissors or other cutting implements.

(xv) Televisions and audio or video equipment.

(xvi) Umbrellas.

(5) Eating, drinking, or smoking is prohibited.

Appendix A FOIA Exemptions and Classification Categories

(a) *Explanation of FOIA Exemptions and Classification Categories.*

(1) *Explanation of FOIA Exemptions.* Exemptions and their explanations are provided in the Table. See chapter III of 32 CFR part 286 for further information.

TABLE—EXPLANATION OF FOIA EXEMPTIONS

Exemption	Explanation
(b)(1)	Applies to records and information currently and properly classified in the interest of national security.
(b)(2)	Applies to records related solely to the internal personnel rules and practices of an agency.
(b)(3)	Applies to records and information protected by another law that specifically exempts the information from public release.
(b)(4)	Applies to records and information on trade secrets and commercial or financial information obtained from a private source which would cause substantial competitive harm to the source if disclosed.
(b)(5)	Applies to records and information of internal records that are deliberative in nature and are part of the decision making process that contain opinions and recommendations.
(b)(6)	Applies to records or information the release of which could reasonably be expected to constitute a clearly unwarranted invasion of the personal privacy of individuals.
(b)(7)	Applies to records or information compiled for law enforcement purposes that could: (a) Reasonably be expected to interfere with law enforcement proceedings; (b) deprive a person of a right to a fair trial or impartial adjudication; (c) reasonably be expected to constitute an unwarranted invasion of the personal privacy of others; (d) disclose the identity of a confidential source; (e) disclose investigative techniques and procedures; or (f) reasonably be expected to endanger the life or physical safety of any individual.
(b)(8)	Applies to records and information for the use of any agency responsible for the regulation or supervision of financial institutions.
(b)(9)	Applies to records and information containing geological and geophysical information (including maps) concerning wells.

(2) *Classification Categories.* Information will not be considered for classification unless its unauthorized disclosure could reasonably be expected to cause identifiable or describable damage to the national security in accordance with section 1.2 of Executive Order 13526, and it pertains to one or more of the following:

(i) Military plans, weapons systems, or operations;

(ii) Foreign government information;

(iii) Intelligence activities (including covert action), intelligence sources or methods, or cryptology;

(iv) Foreign relations or foreign activities of the United States, including confidential sources;

(v) Scientific, technological, or economic matters relating to the national security;

(vi) U.S. Government programs for safeguarding nuclear materials or facilities;

(vii) Vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans, or protection services relating to the national security; or

(viii) The development, production, or use of weapons of mass destruction.

Dated: May 1, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2014–10341 Filed 5–7–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 140, 142, and 150

46 CFR Part 197

[Docket No. USCG–2014–0014]

Workplace Safety and Health for Merchant Mariners

AGENCY: Coast Guard, DHS.

ACTION: Request for comments on petition for rulemaking.

SUMMARY: The Coast Guard seeks public comment on a petition that requests the Coast Guard to initiate a rulemaking to address mariner occupational health and safety. In the attachments to its petition, which asserts that the Coast Guard has failed to provide adequate workplace safety and health measures to protect limited tonnage merchant mariners, the National Mariner's Association has identified several safety and occupational health issues that are not currently addressed under the jurisdiction of the Coast Guard. The Coast Guard will consider all comments received in response to this notice in determining whether or not to initiate the requested rulemaking.

DATES: Comments and related material must either be submitted to our online docket via *http://www.regulations.gov* on or before August 6, 2014, or reach the Docket Management Facility by that date.

ADDRESSES: You may submit comments identified by docket number USCG–2014–0014 using any one of the following methods:

(1) Federal eRulemaking Portal: *http://www.regulations.gov.*

(2) Fax: 202–493–2251.

(3) Mail: Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) Hand delivery: Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, contact Mr. Dan Lawrence, Office of Vessel and Facility Operating Standards (CG–OES–2), U.S. Coast Guard Headquarters, at telephone 202–372–1382, or by email at *james.d.lawrence@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to submit comments and related material on the rulemaking petition described below regarding workplace safety and health for merchant mariners. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting comments: If you submit a comment, please include the docket number for this notice (USCG–2014–0014) and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, and follow the instructions on that Web site. The following link will take you directly to the docket where you may submit your comment: *http://www.regulations.gov/#!docketDetail;D=USCG-2014-0014*. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Viewing the rulemaking petition and comments: To view the petition and comments that have been submitted to the docket, go to *http://www.regulations.gov*, and follow the instructions on that Web site. The following link will take you directly to the docket: *http://www.regulations.gov/#!docketDetail;D=USCG-2014-0014.* If you do not have access to the internet, you may view the docket in person by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act: Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act, system of records notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Description of Petition for Rulemaking

In its Petition for Rulemaking dated November 12, 2013, the National Mariners Association (NMA) asserts that the Coast Guard has not provided adequate workplace safety and health measures comparable to the workplace safety and health measures of the Occupational Safety and Health Administration (OSHA). The NMA views it as the Coast Guard's responsibility, under the Occupational Safety and Health Act of 1970, to provide regulations, comparable to the workplace safety and health regulations of OSHA, in order to protect the safety and health of merchant mariners.

Workplace Safety and Health for Merchant Mariners Determination

The NMA requests that the Coast Guard establish adequate workplace safety and health regulations, comparable to OSHA workplace safety and health regulations, in order to

protect merchant mariners. The petitioner identifies several workplace related safety and health issues where the petitioner has determined that merchant mariners are not currently protected.

Request for Comments

We invite you to review the petition in the docket and submit relevant comments, including comments on whether a rulemaking would be beneficial, or not. The Coast Guard has determined that public comments are needed to aid in the determination whether or not a rulemaking is appropriate. The Coast Guard will consider the petition, any comments received from the public, and other information to determine whether or not to initiate the requested rulemaking.

This notice is issued under authority of 5 U.S.C. 552(a) and 33 CFR 1.05–20.

Dated: April 24, 2014.

F.J. Sturm,

Acting Director of Commercial Regulations and Standards, U.S. Coast Guard.

[FR Doc. 2014–09851 Filed 5–7–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2013–0031; 4500030113]

RIN 1018–AZ59

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Florida Leafwing and Bartram's Scrub-Hairstreak Butterflies

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; revision and reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on the August 15, 2013, proposed designation of critical habitat for the Florida leafwing *(Anaea troglodyta floridalis)* and Bartram's scrub-hairstreak *(Strymon acis bartrami)* butterflies under the Endangered Species Act of 1973, as amended (Act). We are proposing to revise the previously proposed critical habitat for these species by including hydric pine flatwoods in their primary constituent elements and by increasing the size of the Everglades National Park Unit for each butterfly to 7,994 acres (ac) (3,235 hectares (ha)). In total, we are proposing to designate as critical habitat 10,561 ac (4,273 ha) in four units for the Florida leafwing, and 11,539 ac (4,670 ha) in seven units for the Bartram's scrub-hairstreak; all units are located within Miami-Dade and Monroe Counties, Florida. We also announce the availability of a draft economic analysis (DEA) and an amended required determinations section for the proposed determination. We are reopening the comment period to allow all interested parties an opportunity to comment simultaneously on the revised proposed rule, the associated DEA, and the amended required determinations section. Comments previously submitted need not be resubmitted, as they will be fully considered in preparation of the final rule.

DATES: We will consider comments received or postmarked on or before June 9, 2014. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date.

ADDRESSES:

Document availability: You may obtain copies of the proposed rule and the associated DEA on the internet at *http://www.regulations.gov* at Docket No. FWS–R4–ES–2013–0031 or by mail from the South Florida Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Written Comments: You may submit written comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* Submit comments on the critical habitat proposal and associated DEA by searching for Docket No. FWS–R4–ES–2013–0031, which is the docket number for this rulemaking.

(2) *By hard copy:* Submit comments on the critical habitat proposal and associated DEA by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R4–ES–2013–0031; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Craig Aubrey, Field Supervisor, U.S. Fish and Wildlife Service, South Florida Ecological Services Office, 1339 20th Street, Vero Beach, FL 32960, by telephone (772–562–3909), or by facsimile (772–562–4288). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We will accept written comments and information during this reopened comment period on our revised proposed designation of critical habitat for the Florida leafwing and Bartram's scrub-hairstreak, our DEA of the proposed designation, and the amended required determinations provided in this document. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat is not prudent.

(2) Specific information on:

(a) The distribution of the Florida leafwing and Bartram's scrub-hairstreak;

(b) The amount and distribution of Florida leafwing and Bartram's scrub-hairstreak habitat; and

(c) What areas occupied by either or both species at the time of listing contain features essential for the conservation of the species and why; and

(d) What areas not occupied at the time of listing are essential to the conservation of the species and why.

(3) Land use designations and current or planned activities in the subject areas and their probable impacts on proposed critical habitat of either or both species.

(4) Information on the projected and reasonably likely impacts of climate change on the Florida leafwing and Bartram's scrub-hairstreak and proposed critical habitat.

(5) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation; in particular, the benefits of including or excluding areas that exhibit these impacts.

(6) Information on the extent to which the description of economic impacts in the DEA is a reasonable estimate of the likely economic impacts.

(7) The likelihood of adverse social reactions or social welfare impacts to the designation of critical habitat, as discussed in the associated documents of the DEA, and how the consequences of such reactions or impacts, if likely to occur, would relate to the conservation and regulatory benefits of the proposed critical habitat designation for either or both species.

(8) Whether any areas we are proposing for critical habitat designation for either or both species should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act.

(9) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

If you submitted comments or information on the proposed rule (78 FR 49832) during the initial comment period from August 15, 2013, to October 15, 2013, please do not resubmit them. We will incorporate them into the public record as part of this comment period, and we will fully consider them in the preparation of our final determination. However, new comments may be submitted. Our final determination concerning critical habitat will take into consideration all written comments and any additional information we receive during both comment periods. On the basis of public comments, we may, during the development of our final determination, find that areas proposed are not essential, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion.

You may submit your comments and materials concerning the proposed rule or DEA by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit a comment via *http://www.regulations.gov,* your entire comment—including any personal identifying information—will be posted on the Web site. We will post all hardcopy comments on *http://www.regulations.gov* as well. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule and DEA, will be available for public inspection on *http://www.regulations.gov* at Docket No. FWS–R4–ES–2013–0031, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, South Florida Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed rule and the DEA on the Internet at *http://www.regulations.gov* at Docket Number FWS–R4–ES–2013–0031, or by mail from the South Florida Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT** section).

Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat for the Florida leafwing and Bartram's scrub-hairstreak in this document. For more information on the Florida leafwing and Bartram's scrub-hairstreak and their habitats, refer to the proposed listing and critical habitat rule published in the **Federal Register** on August 15, 2013 (78 FR 49832), which is available online at *http://www.regulations.gov* (at Docket Number FWS–R4–ES–2013–0031) or from the South Florida Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Previous Federal Actions

On August 15, 2013, we published a proposed rule to designate critical habitat for the Florida leafwing and Bartram's scrub-hairstreak (78 FR 49832). We proposed to designate approximately 8,283 ac (3,351 ha) in four units for the Florida leafwing and 9,261 ac (3,748 ha) in seven units for the Bartram's scrub-hairstreak, located in Miami-Dade and Monroe Counties, Florida, as critical habitat. That proposal had a 60-day comment period, ending October 15, 2013.

Critical Habitat

Section 3 of the Act defines critical habitat as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting critical habitat must consult with us on the effects of their proposed actions, under section 7(a)(2) of the Act.

New Information and Changes From the Previously Proposed Critical Habitat

In this document, we are notifying the public of changes to the proposed critical habitat rule. In the August 15, 2013, proposed rule (78 FR 49832), we discussed the current distribution of the Florida leafwing and Bartram's scrub-hairstreak. Our analysis indicated the Florida leafwing is known to actively disperse throughout the majority of the Long Pine Key region of Everglades National Park (ENP) (Salvato and Salvato 2010, p. 91; 2010c, p. 139). Similarly, Salvato and Salvato (2010b, p. 159) indicated that, while generally uncommon, the Bartram's scrub-hairstreak is widespread within the Long Pine Key region.

Since publication of the proposed rule, we have obtained new information regarding the distribution of the Florida leafwing and Bartram's scrub-hairstreak documenting that their distribution, as well as the boundaries of pine rockland habitat within ENP in which they occur, is larger than we indicated in the proposed rule. Sadle (pers. comm. 2013c) and Salvato (pers. comm. 2013) indicate that several areas with recent Florida leafwing and Bartram's scrub-hairstreak observations, as well as areas with known hostplant populations, were not included within the critical habitat boundaries proposed for the ENP in the Miami-Dade County, Florida, Units of each butterfly.

Accordingly, we are proposing to revise our proposed critical habitat designation for the Florida leafwing and Bartram's scrub-hairstreak by increasing the size of the ENP Miami-Dade County, Florida, Units of both butterflies from 5,716 ac (2,313 ha) to 7,994 ac (3,235 ha), to incorporate the additional pine rockland and associated habitats within the Long Pine Key region of ENP where additional recent sightings have been documented. These habitat patches in the expansion area of proposed critical habitat will ensure connectivity between viable populations within the Long Pine Key region of ENP.

In total, we are proposing to designate critical habitat consisting of 10,561 ac (4,273 ha) in four units for the Florida leafwing and 11,539 ac (4,670 ha) in seven units for the Bartram's scrub-hairstreak, located in Miami-Dade and

Monroe Counties, Florida. For a full description of the previously proposed units for these subspecies, please see the proposed critical habitat rule (78 FR 49832; August 15, 2013).

We also received new information which indicates existing data do not support the necessity of including a specified return interval for disturbance (i.e., 3 to 5 years for fire), as indicated under primary constituent element (PCE) 4. Information indicates that the butterflies have been observed at varying densities within pine rocklands that have burned at intervals of up to 10 years. Observations of the Florida leafwing and Bartram's scrub-hairstreak within portions of Long Pine Key that have experienced fire or other disturbance regimes at intervals of up to 10 years (Salvato and Salvato 2010a, p. 91; 2010b, p. 154; Sadle pers. comm. 2013c) suggest further studies are required on the influence of these factors on butterfly ecologies. In addition, we received new information that indicates the physical and biological feature (PBF) 5 should be modified to mention storms, in addition to fire, as disturbance regimes for both butterflies (Cook 2013, pers. comm.).

Because of this new information on the distribution of Florida leafwing and the Bartram's scrub-hairstreak, as well as additional comments we received on disturbance regimes and fire-return intervals in the pine rocklands of ENP, we are proposing to revise the physical and biological features (PBFs) and corresponding primary constituent elements (PCEs) for both butterflies to include the new habitats and disturbance regimes and to modify fire-return intervals. Therefore, for both butterflies, hydric pine flatwoods are being included in all habitats of the PBFs and the PCEs. Specific time intervals have been removed from the disturbance and fire-return intervals of the PCEs for both butterflies.

Therefore, the purpose of this proposed revision to the proposed critical habitat is to include these new areas that are currently occupied by Florida leafwing and the Bartram's scrub-hairstreak, which contain the PBFs essential to the conservation of the species, and may require special management considerations or protection, and thus meet the definition of critical habitat. The expansion of the ENP unit included in the proposed designation would provide for the conservation of both butterflies by:

(1) Maintaining the PBFs essential to the conservation of both butterflies where they are known to occur;

(2) Maintaining their current distribution, thus preserving genetic variation throughout the range of the species and minimizing the potential effects of local extirpation; and

(3) Maintaining connectivity between viable populations within the Long Pine Key region of ENP.

Proposed Critical Habitat Designation

We are proposing to revise the previously proposed critical habitat for the Florida leafwing and Bartram's scrub-hairstreak by increasing the size of the ENP Miami-Dade County, Florida, Units of both butterflies. The proposed critical habitat units constitute our current and best assessment of the areas that meet the definition of critical habitat for these subspecies. Except for the ENP units of Florida leafwing and Bartram's scrub-hairstreak, the proposed critical habitat for both butterflies are unchanged from our descriptions in the August 15, 2013, proposed rule (78 FR 49832), and are not repeated in this document. We present below brief descriptions of the revised ENP Miami-Dade County, Florida Unit, and reasons why it meets the definition of critical habitat for the Florida leafwing and Bartram's scrub-hairstreak.

Everglades National Park Unit, Miami-Dade County, Florida

The proposed ENP Miami-Dade County, Florida Unit for Florida leafwing and Bartram's scrub-hairstreak consists of 7,994 ac (3,235 ha) in Miami-Dade County. This unit is composed entirely of lands in Federal ownership, 100 percent of which are located within the Lone Pine Key region of ENP. This unit is currently occupied by both butterflies and contains all the PBFs, including suitable habitat (pine rockland and associated rockland and hydric pine flatwood habitats of sufficient size), hostplant presence, natural or artificial disturbance regimes, low levels of nonnative vegetation and larval parasitism, hostplant, and restriction of pesticides and contains the PCE of pine rockland (PCE #1 for both species).

The PBFs in this unit may require special management considerations or protection to address threats of fire suppression, habitat fragmentation, poaching, and sea level rise. However, in most cases these threats are being addressed or coordinated with the National Park Service to implement needed actions.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

When considering the benefits of inclusion for an area, we consider, among other factors, the additional regulatory benefits that an area would receive through the analysis under section 7 of the Act addressing the destruction or adverse modification of critical habitat as a result of actions with a Federal nexus (activities conducted, funded, permitted, or authorized by Federal agencies), the educational benefits of identifying areas containing essential features that aid in the recovery of the listed species, and any ancillary benefits triggered by existing local, State or Federal laws as a result of the critical habitat designation.

When considering the benefits of exclusion we consider, among other things, whether exclusion of a specific area is likely to incentivize or result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan. In the case of the Florida leafwing and Bartram's scrub-hairstreak, the benefits of critical habitat include public awareness of the presence of the Florida leafwing and Bartram's scrub-hairstreak and the importance of habitat protection, and where a Federal nexus exists, increased habitat protection for the Florida leafwing and Bartram's scrub-hairstreak due to protection from adverse modification or destruction of critical habitat. In practice, situations with a Federal nexus exist primarily on Federal lands or for projects undertaken by Federal agencies.

We have not proposed to exclude any areas from critical habitat. However, the final decision on whether to exclude any areas will be based on the best scientific data available at the time of the final designation, including information obtained during the comment period and information about the economic impact of designation. Accordingly, we have prepared a draft economic analysis (DEA) concerning the proposed critical habitat designation, which is available for review and comment (see **ADDRESSES**).

Consideration of Economic Impacts

Section 4(b)(2) of the Act and its implementing regulations require that we consider the economic impact that

may result from a designation of critical habitat. As part of this assessment we identify the geographic areas or specific activities that could experience the greatest impacts, measured in terms of changes in social welfare. To assess the probable economic impacts of a designation, we begin by identifying the specific land uses or activities and projects that may occur in areas proposed as critical habitat. We then evaluate the impacts that a specific critical habitat designation may have in terms of restricting or modifying these land uses or activities for the benefit of the species and its habitat. Next, we determine which conservation efforts may be the result of the species being listed under the Act versus those attributed solely to the designation of critical habitat for this particular species. The probable economic impact of a proposed critical habitat designation is analyzed by comparing scenarios ''without critical habitat'' and ''with critical habitat.'' The ''without critical habitat'' scenario represents the baseline for the analysis, which includes the existing regulatory and socio-economic burden imposed on landowners, managers, or other resource users potentially affected by the designation of critical habitat (e.g., under the Federal listing as well as other Federal, State, and local regulations). The baseline costs, therefore, include the costs of all efforts attributable to the listing of the species under the Act (i.e., conservation of the species and its habitat incurred regardless of whether critical habitat is designated). The ''with critical habitat'' scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts would not be expected without the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs. These are the costs we use when evaluating the benefits of inclusion and exclusion of particular areas from the final designation of critical habitat should we choose to conduct an optional 4(b)(2) exclusion analysis.

For this designation, we developed an incremental effects memorandum (IEM) considering the probable incremental economic impacts that may result from the proposed designation of critical habitat. The information contained in our IEM was then used to develop a screening analysis of the probable effects of the designation of critical habitat for the Florida leafwing and Bartram's scrub-hairstreak (IEc 2014, entire). The purpose of the screening analysis is to filter out the geographic areas in which the critical habitat designation is unlikely to result in probable incremental economic impacts. In particular, the screening analysis considers baseline costs (i.e., absent critical habitat designation) and includes probable economic impacts where land and water use may be subject to conservation plans, land management plans, best management practices, or regulations that protect the habitat area as a result of the Federal listing status of the species. The screening analysis filters out particular areas of critical habitat that are already subject to such protections and are, therefore, unlikely to incur incremental economic impacts. The screening analysis also assesses whether units are unoccupied by the species and may require additional management or conservation efforts as a result of the critical habitat designation and may incur incremental economic impacts. This screening analysis, combined with the information contained in our IEM, is our DEA of the proposed critical habitat designation for the Florida leafwing and Bartram's scrub-hairstreak and is summarized in the narrative below.

Executive Orders 12866 and 13563 direct Federal agencies to assess the costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consistent with the E.O. regulatory analysis requirements, our effects analysis under the Act may take into consideration impacts to both directly and indirectly impacted entities, where practicable and reasonable. We assess, to the extent practicable and if sufficient data are available, the probable impacts to both directly and indirectly impacted entities. As part of our screening analysis, we considered the types of economic activities that are likely to occur within the areas likely affected by the critical habitat designation. In our IEM dated November 26, 2013, we identified probable incremental economic impacts associated with the following categories of activities: (1) Fire management; (2) forest management; (3) conservation/restoration; (4) flood control; (5) recreation; (6) water quality/supply; (7) development; (8) utilities; (9) mosquito control; (10) transportation; and (11) tourism. We considered each industry or category individually for each butterfly. Additionally, we considered whether their activities have any Federal involvement. Critical habitat designation will not affect activities that do not have any Federal involvement; only activities conducted, funded, permitted, or authorized by Federal agencies. In areas where the Florida leafwing and Bartram's scrub-hairstreak are present, Federal agencies already are required to consult with the Service under section 7 of the Act on activities they fund, permit, or implement that may affect the species. If we finalize the proposed critical habitat designations, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In our IEM, we attempted to distinguish between the effects that would result from the species being listed and those attributable to the critical habitat designation (i.e., difference between the jeopardy and adverse modification standards) for the Florida leafwing and Bartram's scrub-hairstreak. Because the designation of critical habitat for Florida leafwing and Bartram's scrub-hairstreak was proposed concurrently with the listing, it has been our experience that it is more difficult to discern which conservation efforts are attributable to the species being listed and those which would result solely from the designation of critical habitat. However, the following specific circumstances in this case help to inform our evaluation: (1) The essential physical and biological features identified for critical habitat are the same features essential for the life requisites of the species, and (2) any actions that would result in sufficient harm or harassment to constitute jeopardy to the Florida leafwing and Bartram's scrub-hairstreak would also likely adversely affect the essential physical and biological features of critical habitat. The IEM outlines our rationale concerning this limited distinction between baseline conservation efforts and incremental impacts of the designation of critical habitat for these subspecies.

The proposed revised critical habitat designation for the Florida leafwing totals approximately 10,561 ac (4,273 ha), of which approximately 74 percent is currently occupied by the butterfly. The proposed critical habitat designation includes lands under Federal (85 percent), State (3 percent), and private and local municipal (12 percent) ownership.

The proposed revised critical habitat designation for the Bartram's scrub-hairstreak totals approximately 11,539 ac (4,670 ha) of which 98 percent is currently occupied by the butterfly. The proposed critical habitat designation includes lands under Federal (80

percent), State (5 percent), and private and local municipalities (15 percent) ownership.

In other words, approximately 98 percent of proposed revised critical habitat areas are considered to be occupied by one or both butterfly species, providing significant baseline protection. Any actions that may affect the Florida leafwing and Bartram's scrub-hairstreak would also affect designated critical habitat, and it is unlikely that any additional conservation efforts would be recommended to address the adverse modification standard over and above those recommended as necessary to avoid jeopardizing the continued existence of the butterflies. For both butterflies, the quality of their habitat, especially when it includes the host plant, is closely linked to the species' survival. Therefore, in our DEA we determined that only administrative costs are expected in the proposed occupied critical habitat (for the Florida leafwing and Bartram's scrub-hairstreak). Thus, the Service believes that, in most circumstances, while this additional analysis will require time and resources by both the Federal action agency and the Service, these costs would predominantly be administrative in nature and would not be significant.

Approximately 24 percent of the proposed critical habitat for the Florida leafwing butterfly is unoccupied. These areas were historically occupied, but are now unoccupied, and are essential for the conservation of the subspecies. Approximately 2 percent of the proposed critical habitat for Bartram's scrub-hairstreak is unoccupied. These areas are not known to be historically occupied by the subspecies; however they are within the historical range of the butterfly and are essential for the conservation of the subspecies. In the two units that are not occupied by either butterfly species, in the DEA we also conclude incremental impacts are likely limited to administrative costs, because of the existing baseline protections in these areas. Specifically:

- BSHB Unit 6 consists of a mix of Federal, State, county, and private lands on the remote island of No Name Key, located in the Florida Keys. Of the acres proposed as critical habitat on No Name Key, 85 percent are currently managed for conservation purposes as part of the National Key Deer Refuge (NKDR). The remaining acres are privately owned and currently managed as part of Monroe County's Habitat Conservation Plan (HCP) related to the Federal Emergency Management Agency's National Flood Insurance Program (FEMA NFIP).
- BSHB Unit 7 occurs entirely within the NKDR, managed by the Service for conservation purposes. Future activities that may result in section 7 consultation in this unit are limited to periodic fire management and insect control activities.

Federal action agencies will most likely incur incremental costs associated with section 7 consultations. The economic costs of implementing the rule through section 7 of the Act will most likely be limited to the additional administrative effort required to consider adverse modification in a small number of future section 7 consultations. Approximately 98 percent of proposed critical habitat areas are considered to be occupied by one or both butterfly species (11,319 acres), providing significant baseline protection. Critical habitat designation is unlikely to result in incremental changes to conservation actions in currently occupied areas over and above those necessary to avoid jeopardizing of the species. Accordingly, only administrative costs are expected in those areas. In the proposed critical habitat not occupied by either butterfly species (about 2 percent), incremental impacts are also likely limited to administrative costs due to existing protections in these areas. Existing protections include Service management of the majority of the areas as part of NKDR operating under their CCP, and the remainder of the areas are privately owned and already regulated by a complex mix of Federal, State, and local land management regulations and policies.

Based on the available information, we anticipate no more than eight to nine consultations per year in occupied and unoccupied critical habitat units. Unit costs of such administrative efforts range from approximately $400 to $9,000 per consultation (2013 dollars, total cost for all parties participating in a single consultation). Applying these unit cost estimates, this analysis conservatively estimates that the administrative cost of considering adverse modification in section 7 consultation will result in incremental costs of up to $72,000 (2013 dollars) in a given year.

Regulatory uncertainty generated by critical habitat may result in landowners or buyers perceiving that the rule will restrict land or water use activities in some way and therefore value the resource less than they would have absent critical habitat. This is a perceptional, or stigma, effect of critical habitat on markets. Costs resulting from public perception of the impact of critical habitat, if they occur, are more likely to occur on private lands located in BSHB Units 2, 3, 4 and FLB Units 2 and 3 in Miami-Dade County.

Therefore, the incremental administrative burden resulting from the designation is unlikely to reach $100 million in a given year based on the small number of anticipated consultations and pre-consultation costs. Under Executive Order 12866, agencies must assess the potential costs and benefits of regulatory actions and quantify those costs and benefits if that action may have an effect on the economy of $100 million or more annually.

As we stated earlier, we are soliciting data and comments from the public on the DEA, as well as all aspects of the proposed rule and our amended required determinations. We may revise the proposed rule or supporting documents to incorporate or address information we receive during the public comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of these subspecies.

Required Determinations—Amended

In our August 15, 2013, proposed rule (78 FR 49832), we indicated that we would defer our determination of compliance with several statutes and executive orders until we had evaluated the probable effects on landowners and stakeholders and the resulting probable economic impacts of the designation. Following our evaluation in the DEA of the probable incremental economic impacts resulting from the designation of critical habitat for the Florida leafwing and Bartram's scrub-hairstreak, we have amended or affirmed our determinations below. Specifically, we affirm the information in our proposed rule concerning Executive Order (E.O.s) 12866 and 13563 (Regulatory Planning and Review), E.O. 13132 (Federalism), E.O. 12988 (Civil Justice Reform), E.O. 13211 (Energy Supply, Distribution, or Use), the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951). However, based on our evaluation of the probable incremental economic impacts of the proposed designation of critical habitat for the Florida leafwing and Bartram's scrub-hairstreak, we are amending our

required determination concerning the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*) and E.O. 12630 (Takings).

Regulatory Flexibility Act

Under the RFA, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

The Service's current understanding of the requirements under the RFA, as amended, and following recent court decisions, is that Federal agencies are required to evaluate the potential incremental impacts of rulemaking only on those entities directly regulated by the rulemaking itself and, therefore, are not required to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried by the agency is not likely to adversely modify critical habitat. Therefore, under these circumstances only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Under these circumstances, it is our position that only Federal action agencies will be directly regulated by this designation. Federal agencies are not small entities, and, to this end, there is no requirement under RFA to evaluate the potential impacts to entities not directly regulated. Therefore, because no small entities are directly regulated by this rulemaking, the Service certifies that, if promulgated, the proposed critical habitat designation will not have a significant economic impact on a substantial number of small entities.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. For the above reasons and based on currently available information, we certify that, if promulgated, the proposed critical habitat designation would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

E.O. 12630 (Takings)

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for Florida leafwing and Bartram's scrub-hairstreak in a takings implications assessment. As discussed above, the designation of critical habitat affects only Federal actions. Although private parties that receive Federal funding, assistance, or require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. The DEA found that no significant economic impacts are likely to result from the designation of critical habitat for Florida leafwing and Bartram's scrub-hairstreak. Because the Act's critical habitat protection requirements apply only to Federal agency actions, few conflicts between critical habitat and private property rights should result from this designation. Based on information contained in the economic analysis assessment and described within this document, it is not likely that economic impacts to a property owner would be of a sufficient magnitude to support a takings action. Therefore, we conclude that the designation of critical habitat for the Florida leafwing and Bartram's scrub-hairstreak does not pose significant takings implications for lands within or affected by the designation.

Author

The primary authors of this notice are the staff members of the South Florida Ecological Services Field Office, Southeast Region, U.S. Fish and Wildlife Service (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to further amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, which was proposed to be amended at 78 FR 49832, August 15, 2013, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; 4201–4245; unless otherwise noted.

■ 2. In § 17.95 paragraph (i), amend the entries proposed at 78 FR 49832 on August 15, 2013, for ''Bartram's Scrub-hairstreak Butterfly *(Strymon acis bartrami)''* and ''Florida Leafwing Butterfly *(Anaea troglodyta floridalis),''* by revising paragraphs (i)(2), (i)(5), and (i)(6) for both entries, to read as follows::

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(i) *Insects.*

* * * * *

Bartram's Scrub-Hairstreak Butterfly *(Strymon acis bartrami)*

* * * * *

(2) Within these areas, the primary constituent elements of the physical or biological features essential to the conservation of the Bartram's scrub-hairstreak are:

(i) Areas of pine rockland habitat, and in some locations, associated rockland hammocks and hydric pine flatwoods.

(A) Pine rockland habitat contains:

(1) Open canopy, semi-open subcanopy, and understory;

(2) Substrate of oolitic limestone rock; and

(3) A plant community of predominately native vegetation.

(B) Rockland hammock habitat associated with the pine rocklands contains:

(1) Canopy gaps and edges with an open to semi-open canopy, subcanopy, and understory;

(2) Substrate with a thin layer of highly organic soil covering limestone or organic matter that accumulates on top of the underlying limestone rock; and

(3) A plant community of predominately native vegetation.

(C) Hydric pine flatwood habitat associated with the pine rocklands contains:

(1) Open canopy with a sparse or absent subcanopy and dense understory;

(2) Substrate with a thin layer of poorly drained sands and organic materials that accumulates on top of the underlying limestone or calcareous rock; and

(3) A plant community of predominately native vegetation.

(ii) The absence of competitive nonnative plant species or their existence in quantities low enough to have minimal effect on survival of Bartram's scrub-hairstreak butterfly.

(iii) The presence of the butterfly's hostplant, pineland croton, in sufficient abundance for larval recruitment, development, and food resources, and for adult butterfly nectar source and reproduction.

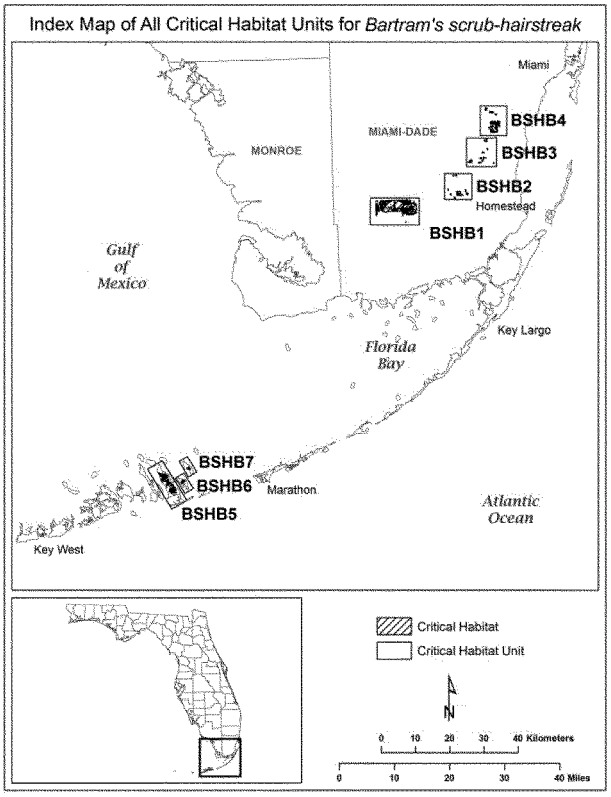
(iv) A dynamic natural disturbance regime or one that artificially duplicates natural ecological processes (e.g., fire, hurricanes, or other weather events, at appropriate intervals) that maintains the pine rockland habitat and associated hardwood hammock and hydric pine flatwood plant communities.

(v) Pine rockland habitat and associated hardwood hammock and hydric pine flatwood plant communities that allow for connectivity and are sufficient in size to sustain viable populations of Bartram's scrub hairstreak butterfly.

(vi) Pine rockland habitat and associated hardwood hammock and hydric pine flatwood plant communities with levels of pesticide low enough to have minimal effect on the survival of the butterfly or its ability to occupy the habitat.

* * * * *

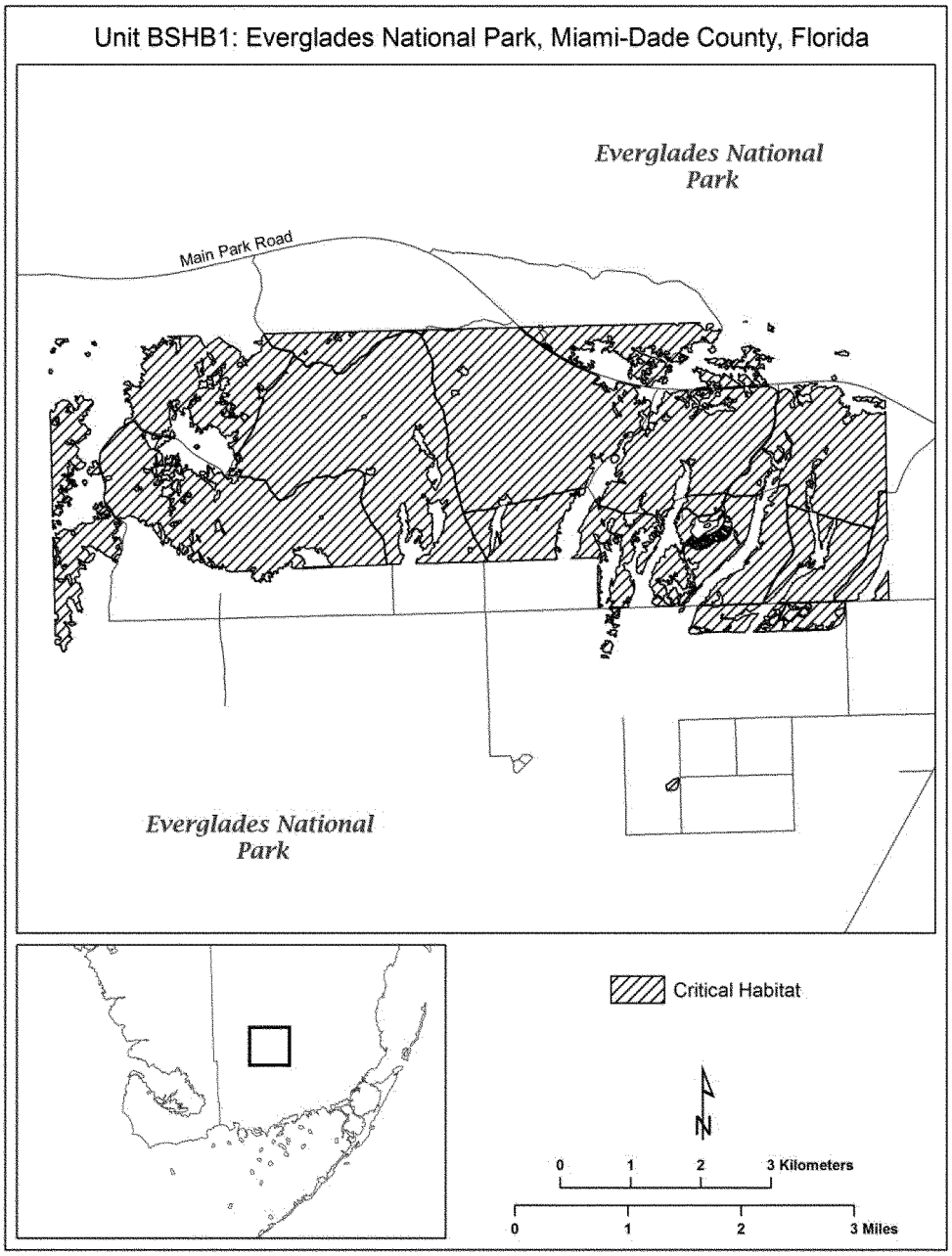
(5) *Note:* Index map of all critical habitat units for Bartram's scrub-hairstreak follows:



(6) Unit BSHB1: Everglades National Park, Miami-Dade County, Florida.

(i) *General Description:* Unit BSHB1 consists of 7,994 ha (3,235 ac) composed entirely of lands in Federal ownership, 100 percent of which are located within the Long Pine Key region of Everglades National Park.

(ii) Map of Unit BSHB1 follows:



* * * * *

Florida Leafwing Butterfly *(Anaea troglodyta floridalis)*

* * * * *

(2) Within these areas, the primary constituent elements of the physical or biological features essential to the conservation of the Florida leafwing butterfly consist of six components:

(i) Areas of pine rockland habitat, and in some locations, associated rockland hammocks and hydric pine flatwoods.

(A) Pine rockland habitat contains:

(1) Open canopy, semi-open subcanopy, and understory;

(2) Substrate of oolitic limestone rock; and

(3) A plant community of predominately native vegetation.

(B) Rockland hammock habitat associated with the pine rocklands contains:

(1) Canopy gaps and edges with an open to semi-open canopy, subcanopy, and understory;

(2) Substrate with a thin layer of highly organic soil covering limestone or organic matter that accumulates on top of the underlying limestone rock; and

(3) A plant community of predominately native vegetation.

(C) Hydric pine flatwood habitat associated with the pine rocklands contains:

(1) Open canopy with a sparse or absent subcanopy and dense understory;

(2) Substrate with a thin layer of poorly drained sands and organic materials that accumulates on top of the underlying limestone or calcareous rock; and

(3) A plant community of predominately native vegetation.

(ii) The absence of competitive nonnative plant species or their existence in quantities low enough to have minimal effect on survival of the Florida leafwing.

(iii) The presence of the butterfly's hostplant, pineland croton, in sufficient abundance for larval recruitment, development, and food resources and

for adult butterfly roosting habitat and reproduction.

(iv) A dynamic natural disturbance regime or one that artificially duplicates natural ecological processes (e.g., fire, hurricanes, or other weather events, at appropriate intervals) that maintains the pine rockland habitat and associated hardwood hammock and hydric pine flatwood plant communities.

(v) Pine rockland habitat and associated hardwood hammock and hydric pine flatwood plant communities sufficient in size to sustain viable Florida leafwing populations.

(vi) Pine rockland habitat and associated hardwood hammock and hydric pine flatwood plant communities with levels of pesticide low enough to have minimal effect on the survival of the butterfly or its ability to occupy the habitat.

* * * * *

(5) *Note:* Index map of all critical habitat units for Florida leafwing follows:

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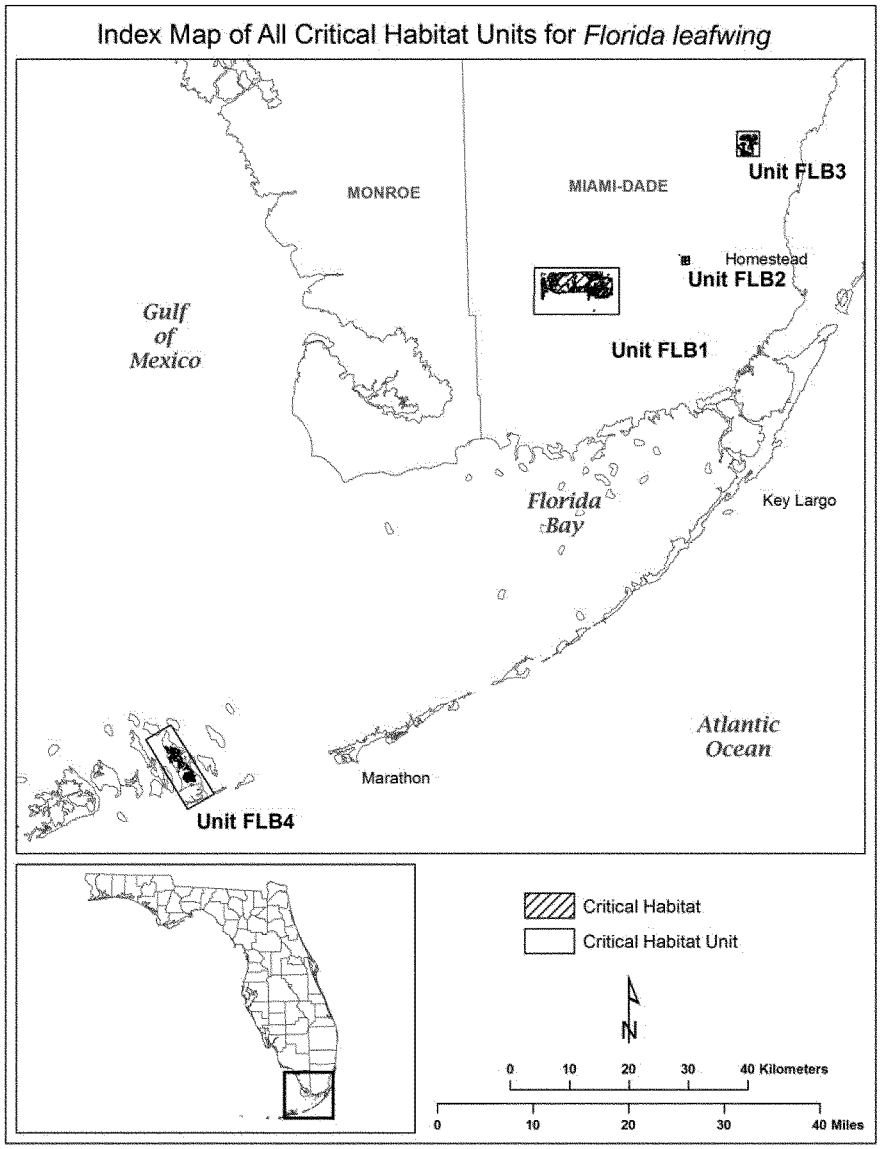
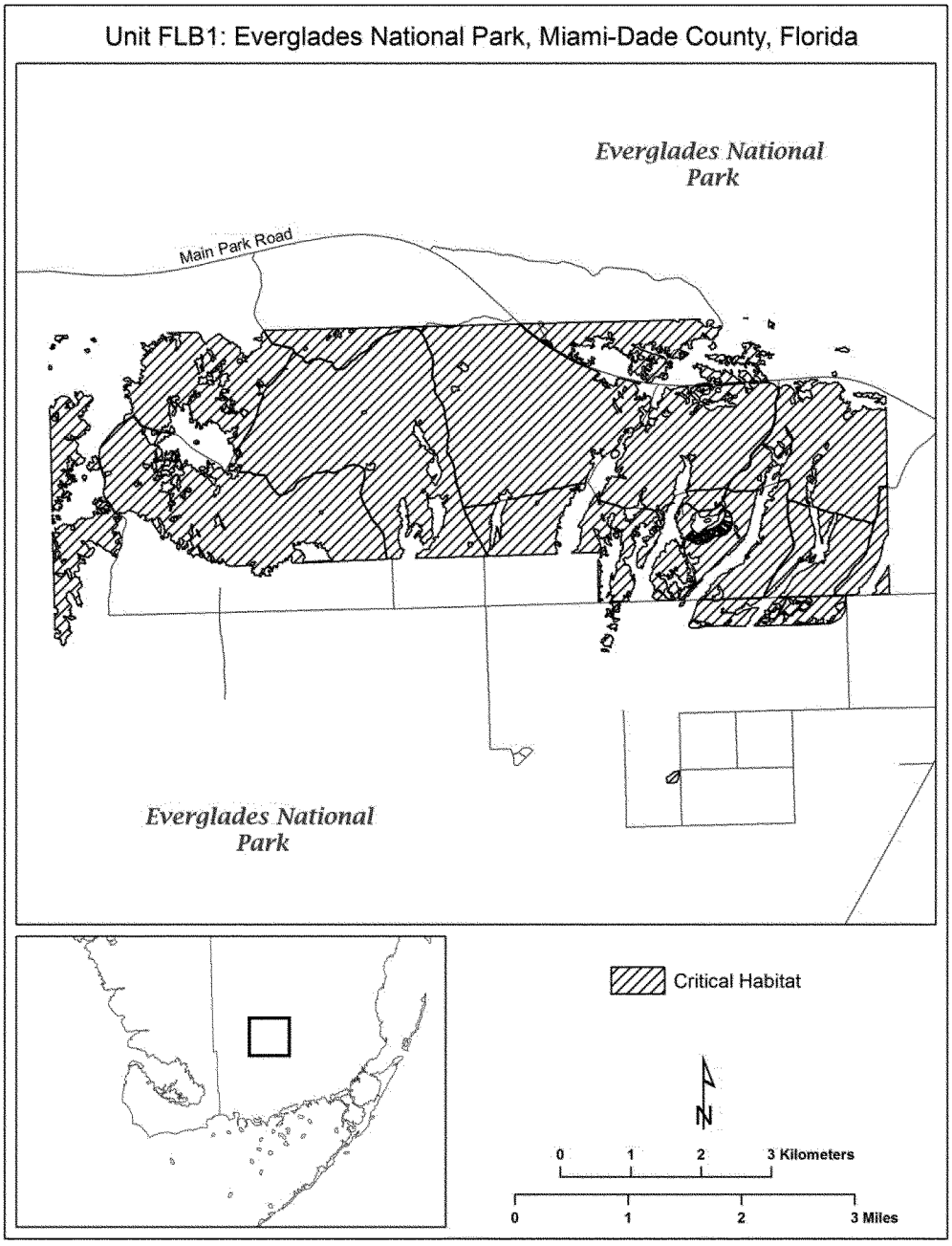


(6) *Note:* Unit FLB1: Everglades National Park, Miami-Dade County, Florida.

(i) *General Description:* Unit FLB1 consists of 7,994 ha (3,235 ac) in Miami-Dade County and is composed entirely of lands in Federal ownership, 100 percent of which are located within the Long Pine Key region of Everglades National Park.

(ii) Map of Unit FLB1 follows:



* * * * *

Dated: April 10, 2014.

Rachel Jacobson,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2014–10533 Filed 5–7–14; 8:45 am]

BILLING CODE 4310–55–C

Notices

Federal Register
Vol. 79, No. 89
Thursday, May 8, 2014

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

[OMB Control Number: 3002–0003]

Information Collection Request Submitted to Office of Management and Budget (Renewal)

AGENCY: Administrative Conference of the United States.

ACTION: Thirty-day notice requesting comments.

SUMMARY: Pursuant to the Paperwork Reduction Act of 1995, the Administrative Conference of the United States will submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB) requesting renewal of an existing and previously approved ICR (No. 3002–0003), substitute ''Confidential Employment and Financial Disclosure Report.'' This form is a simplified substitute for the Office of Government Ethics (OGE) Form 450, which non-government members of the Conference would otherwise be required to file. OGE has approved the use of this substitute form. The current OMB approval expires on May 31, 2014. The changes proposed to the current form are minor in nature. This proposed ICR renewal was published in the **Federal Register** at 79 FR 12143 (March 4, 2014), allowing for a 60-day comment period. No comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments must be received by June 9, 2014.

ADDRESSES: Interested persons may submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Administrative Conference of the United States, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to 202–395–5806, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shawne McGibbon, General Counsel, Administrative Conference of the United States, Suite 706 South, 1120 20th Street NW., Washington, DC 20036; Telephone 202–480–2080, Email: *smcgibbon@acus.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, the Administrative Conference of the United States (ACUS) will submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB) requesting renewal of an existing and previously approved ICR (No. 3002–0003), substitute ''Confidential Employment and Financial Disclosure Report.'' This proposed ICR renewal was published in the **Federal Register** at 79 FR 12143 (March 4, 2014), allowing for a 60-day comment period. No comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

ACUS is charged with developing recommendations for the improvement of Federal administrative procedures (5 U.S.C. 591). Its recommendations are the product of a research process overseen by a small staff, but ultimately adopted by a membership of 101 experts, including approximately 45 non-government members—5 Council members and up to 40 others (5 U.S.C. 593(b) and 5 U.S.C. 595(b)). These individuals are deemed to be ''special government employees'' within the meaning of 18 U.S.C. 202(a) and, therefore, are subject to confidential financial disclosure requirements of the Ethics in Government Act (5 U.S.C. App. 107) and regulations of the Office of Government Ethics (OGE). The ACUS substitute ''Confidential Employment and Financial Disclosure Report'' submitted (''Substitute Disclosure Form'') is a shorter substitute for OGE Form 450, which ACUS non-government members would otherwise be required to file.

In addition to the non-government members of the Conference, the Chairman, with the approval of the Council established under 5 U.S.C. 595(b), may appoint additional persons in various categories, for participation in Conference activities, but without voting privileges. These categories include senior fellows, special counsels, and liaison representatives from other government entities or professional associations. The estimated maximum number of such individuals that may also be required to submit the Substitute Disclosure Form at any particular time is 45.

Prior to the termination of funding for ACUS in 1995, the agency was authorized to use for this purpose a simplified form that was a substitute for OGE Form 450. The simplified substitute form was approved by OGE following a determination by the ACUS Chairman, pursuant to 5 CFR 2634.905(a), that greater disclosure is not required because the limited nature of the agency's authority makes very remote the possibility that a real or apparent conflict of interest will occur. ACUS received OMB approval for the simplified substitute form in 1994.

ACUS was re-established in 2010. On June 10, 2010, OGE renewed its approval for this simplified substitute form, which ACUS must provide to its non-government members in advance of membership meetings. In 2011, ACUS received approval from OMB for use of this form for a 3-year period through May 31, 2014. ACUS is now requesting approval by OMB for a renewal period of three years. The changes proposed to the current form are minor in nature.

Subsequent to OMB's approval of the ICR in 2011, OGE clarified its opinion and stated that the forms need only be completed by the various types of ACUS non-government members prior to each plenary session they attend, but not prior to committee meetings they attend. This will greatly reduce the number of times individuals will have to complete the form.

As required by the Ethics in Government Act, 5 U.S.C. App. 107(a); Executive Order 12674, sec. 201(d); and OGE regulations, 5 CFR 2634.901(d), copies of the substitute form submitted to ACUS by its members are confidential and may not be released to the public.

The proposed substitute ''Confidential Employment and Financial Disclosure Report'' and the Supporting Statement submitted to OMB may be viewed at: *http://www.reginfo.gov/public/do/PRAMain.* To view these documents, select ''Administrative Conference of

the United States'' under ''Currently Under Review''; click on the ICR Reference Number; then click on either ''View Information Collection (IC) List'' or ''View Supporting Statement and Other Documents.'' To see the corresponding documents for the currently approved version, select ''Administrative Conference of the United States'' under ''Current Inventory.''

The total annual burden on respondents for the renewal period is estimated to be less than the 2011 estimate because the number of times the form has to be completed by each respondent has been greatly reduced. ACUS estimates a total burden of 45 hours (down from 135 hours in 2011), based on estimates of 90 persons submitting the form an average of 2 times per year, requiring no more than 15 minutes per response.

Interested persons are invited to submit comments regarding this burden estimate or any other aspect of this information collection, including its necessity, utility and clarity for the proper performance of the Conference's functions.

Dated: May 5, 2014.

Shawne C. McGibbon,

General Counsel.

[FR Doc. 2014–10592 Filed 5–7–14; 8:45 am]

BILLING CODE 6110–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

National Advisory Committee for Implementation of the National Forest System Land Management Planning Rule

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The National Advisory Committee for Implementation of the National Forest System Land Management Planning Rule (Committee) will meet in Missoula, Montana. Attendees may also participate via webinar and conference call. The Committee operates in compliance with the Federal Advisory Committee Act (FACA) (Pub. L. 92–463). Additional information relating to the Committee can be found by visiting the Committee's Web site at: *http://www.fs.usda.gov/main/planningrule/committee.*

DATES: The meeting will be held, in-person and via webinar/conference call on the following dates and times:

- Wednesday, May 28, 2014 from 8:00 a.m. to 5:00 p.m. MDT.
- Thursday, May 29, 2014 from 8:00 a.m. to 5:00 p.m. MDT.
- Friday, May 30, 2014 from 8:00 a.m. to 12:00 p.m. MDT.

ADDRESSES: The meeting will be located at the Holiday Inn Missoula Downtown, 200 South Pattee Missoula, MT 59802. For anyone who would like to attend via webinar and/or conference call, please visit the Web site listed above or contact Chalonda Jasper listed in the section titled **FOR FURTHER INFORMATION CONTACT**. Written comments must be sent to USDA Forest Service, Ecosystem Management Coordination, 201 14th Street SW., Mail Stop 1104, Washington, DC 20250–1104. Comments may also be sent via email to Chalonda Jasper at *cjasper@fs.fed.us.*

All comments are placed in the record and are available for public inspection and copying, including names and addresses when provided. The public may inspect comments received at 201 14th Street SW., Washington, DC, 2nd Floor Central. To facilitate entry into the building to view comments, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Chalonda Jasper, Ecosystem Management Coordination, 202–260–9400, *cjasper@fs.fed.us.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to provide ongoing advice and recommendations on implementation of the planning rule. This meeting is open to the public.

The following business will be conducted:

1. Continue deliberations on formulating advice for the Secretary,
2. Discussion of Committee work group findings,
3. Dialogue with early adopter forests, and
4. Administrative tasks.

The agenda and a summary of the meeting will be posted on the Committee's Web site within 21 days of the meeting.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Dated: May 2, 2014.

Tony Tooke,

Associate Deputy Chief, National Forest System.

[FR Doc. 2014–10642 Filed 5–7–14; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Modoc Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Modoc Resource Advisory Committee (RAC) will meet in Alturas, California. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meetings is discuss RAC business and projects that meet the intent of Public Law 110–343.

DATES: The meetings will be held May 19, 2014, June 9, 2014, and June 30, 2014 at 6 p.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at Modoc National Forest Supervisor's Office, Conference Room, 225 W. 8th St., Alturas, California 96101.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Modoc National Forest Supervisor's Office, Conference Room, 225 W. 8th St., Alturas, California 96101. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Ann D. Carlson, Acting Forest Supervisor and Designated Federal Officer by phone at (530)233–8700 or via email at *adcarlson@fs.fed.us* or Adrian Cuzick, Rangeland Management Specialist and Resource Advisory Committee Coordinator, by phone at (530)233–8746 or via email at *alcuzick@fs.fed.us*.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday. Please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or procedings by contacting the person listed above.

SUPPLEMENTARY INFORMATION: Additional RAC information, including the meeting agenda and the meeting summary/minutes can be found at the following Web site: *https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf/RAC/Modoc+County?OpenDocument*. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by May 16, 2014, June 6, 2014 and June 27, 2014 to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Adrian Cuzick, Rangeland Management Specialist and Resource Advisory Committee Coordinator, Modoc National Forest, 225 W. 8th St., Alturas, CA 96101; or by email to *alcuzick@fs.fed.us,* or via facsimile to (530)233–8809.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: April 28, 2014.

Ann D. Carlson,

Acting Forest Supervisor.

[FR Doc. 2014–10340 Filed 5–7–14; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of Business Meeting.

DATE AND TIME: Friday, May 16, 2014; 9:30 a.m. EST.

PLACE: 1331 Pennsylvania Ave. NW., Suite 1150, Washington, DC 20425.

MEETING AGENDA

I. Approval of Agenda
II. Program Planning
- Discussion and Vote on Part A of the briefing report: Sex Trafficking: A Gender-Based Civil Rights Violation
- Discussion and Vote on Part A of the briefing report: Engagement with Arab and Muslim American Communities Post 9/11
- Consideration and Vote on Commission Resolution Commemorating the Anniversary of the Civil Rights Act of 1964

III. Management and Operations
- Staff Director's Report

IV. State Advisory Committee (SAC) Appointments
- Connecticut
- Kansas
- Utah
- Vermont

V. Adjourn Meeting

CONTACT PERSON FOR FURTHER INFORMATION: Lenore Ostrowsky, Acting Chief, Public Affairs Unit (202) 376–8591.

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact Pamela Dunston at (202) 376–8105 or at *signlanguage@usccr.gov* at least seven business days before the scheduled date of the meeting.

Dated: May 5, 2014.

Marlene Sallo,

Staff Director.

[FR Doc. 2014–10649 Filed 5–6–14; 11:15 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Comprehensive Regional Decision Support Framework to Prioritize Sites for Coral Reef Conservation in the U.S. Virgin Islands: Survey of Professional SCUBA Divers.

OMB Control Number: 0648-xxxx.

Form Number(s): NA.

Type of Request: Regular submission (request for a new information collection).

Number of Respondents: 238.

Average Hours per Response: 30 minutes.

Burden Hours: 119.

Needs and Uses: This request is for a new data collection to benefit marine resource managers in the U.S. Virgin Islands (USVI). The National Ocean Service (NOS) proposes to collect data on the resource usage patterns, knowledge and values of the professional SCUBA diving community relative to coral reefs in the USVI. Data are needed to support conservation and management goals as defined under the Coral Reef Conservation Act (CRCA) (16 U.S.C. 6401 *et seq.*). The purpose of the CRCA is to advance conservation of coral reef ecosystems in the U.S. and Territories. Specifically, the Act requires the federal government to produce sound scientific information on the condition of coral reef ecosystems and threats to them, so that reefs may be better preserved, sustained and restored. The present data collection is one component of a larger project to produce a science-based decision support tool that will be used by resource managers to prioritize coral reefs in the USVI for the purposes of management under the CRCA.

Researchers propose to collect information from the professional SCUBA diving community in the USVI, who are an important stakeholder group with much knowledge about this marine ecosystem. Information will be gathered from this community because of their experience diving on focal coral reefs and reliance on such ecosystems for their livelihood. The survey will ascertain which coral reef areas are needed/used most by persons in the professional SCUBA diving community. It will gather divers' opinions on the status and health of these coral reefs. Finally, the survey will collect information on the demographic characteristics of professional SCUBA diving community, along with the values they have for local coral reefs.

Data gathered will be used to identify, rank and describe key characteristics of the coral reefs that are most important to the professional SCUBA diving community in the USVI, as well as their perception of reef status and resilience. The survey data will become one of several layers of information combined in a larger effort to objectively map the important reefs in the USVI. Knowledge of the locations of priority reefs, together with an assessment of the threats to those reefs, will provide information to prioritize management actions.

Affected Public: Business or other for-profit organizations; individuals or households.

Frequency: One time.

Respondent's Obligation: Voluntary.

This information collection request may be viewed at *reginfo.gov*. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or faxed to (202) 395–5806.

Dated: May 2, 2014.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2014–10547 Filed 5–7–14; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–812]

Steel Wire Garment Hangers from the Socialist Republic of Vietnam: Rescission of Antidumping Duty Administrative Review; 2012–2014

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce (''the Department'') is rescinding the administrative review of the antidumping duty order on steel wire garment hangers from the Socialist Republic of Vietnam (''Vietnam'') for the period August 2, 2012, through January 31, 2014.

DATES: *Effective:* May 8, 2014.

FOR FURTHER INFORMATION CONTACT: Catherine Bertrand, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3207.

SUPPLEMENTARY INFORMATION:

Background

On February 28, 2014, based on a timely request for review by M&B Metal Products Company, Inc.; Innovative Fabrication LLC/Indy Hanger; and US Hanger Company, LLC (collectively, ''Petitioners''),[1] the Department published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty order on steel wire garment hangers from Vietnam covering the period August 2, 2012, through January 31, 2014.[2] The review covers 49 companies.[3] On April 15, 2014, Petitioners withdrew their request for an administrative review on all of the 49 companies listed in the *Initiation Notice*.[4] No other party requested a review of these companies or any other exporters of subject merchandise.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if the party that requested the review withdraws its request within 90 days of the publication of the notice of initiation of the requested review. In this case, Petitioners timely withdrew their request by the 90-day deadline, and no other party requested an administrative review of the antidumping duty order. As a result, pursuant to 19 CFR 351.213(d)(1), we are rescinding the administrative review of steel wire garment hangers from Vietnam for the period August 2, 2012, through January 31, 2014, in its entirety.[5]

Assessment

The Department will instruct CBP to assess antidumping duties on all appropriate entries. Because the Department is rescinding this administrative review in its entirety, the entries to which this administrative review pertained shall be assessed antidumping duties at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions to CBP 15 days after the publication of this notice in the **Federal Register**, if appropriate.

Notifications

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a final reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: May 2, 2014.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2014–10634 Filed 5–7–14; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See* Steel Wire Garment Hangers from Vietnam: Request for First Administrative Review filed by Petitioners on February 28, 2014.

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 79 FR 18262, 18267–68 (April 1, 2014) (''*Initiation Notice*'').

[3] *See id.*

[4] *See* First Administrative Review of Steel Wire Garment Hangers from Vietnam—Petitioners' Withdrawal of Review Request filed by Petitioners on April 15, 2014.

[5] On April 9, 2014, Petitioners filed a request for the Department to refer to U.S. Customs and Border Protection (''CBP'') information placed on the record concerning enforcement of the order. *See* First Administrative Review of the Antidumping Order on Steel Wire Garment Hangers from Vietnam—Petitioners' Comments on Respondent Selection filed by Petitioners on April 9, 2014. The Department intends to refer the information contained in this submission to CBP.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–804]

Ball Bearings and Parts Thereof From Japan: Rescission of Antidumping Duty Administrative Review, in Part; 2010–2011

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is rescinding in part its administrative review of the antidumping duty order on ball bearings and parts thereof (ball bearings) from Japan with respect to certain companies for the period May 1, 2010, through April 30, 2011.

DATES: *Effective Date:* May 8, 2014.

FOR FURTHER INFORMATION CONTACT: Sandra Dreisonstok or Minoo Hatten, AD/CVD Operations Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0768 and (202) 482–1690 respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 2, 2011, we published a notice of opportunity to request an administrative review of the antidumping duty order on ball bearings from Japan for the period May 1, 2010, through April 30, 2011.[1] We received timely filed requests for review of 31 producers or exporters from various interested parties. On June 28, 2011, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.221(c)(1)(i), we initiated an administrative review of the order on ball bearings from Japan with respect to the following firms: [2]

Asahi Seiko Co., Ltd.
Aisin Seiki Co. Ltd.
Audi AG
Bosch Packaging Technology K.K.
Bosch Rexroth Corporation
Caterpillar Inc.
Caterpillar Japan Ltd.
Caterpillar Overseas S.A.R.L.
Caterpillar Group Services S.A.
Caterpillar Brazil Ltd.
Caterpillar Africa Pty. Ltd.
Caterpillar of Australia Pty. Ltd.
Caterpillar S.A.R.L.
Caterpillar Americas Mexico, S. de R.L. de C.V.
Caterpillar Logistics Services China Ltd.
Caterpillar Mexico, S.A. de C.V.
Glory Ltd.
Hagglunds Ltd.
Hino Motors Ltd.
JTEKT Corporation
Kongskilde Limited
Mazda Motor Corporation
Nachi-Fujikoshi Corporation
NSK Ltd.
NSK Corporation
NTN Corporation
Perkins Engines Company Limited
Sapporo Precision, Inc., and Tokyo Precision, Inc.
Volkswagen AG
Volkswagen Zubehor GmbH
Yamazaki Mazak Trading Corporation

On July 15, 2011, pursuant to a decision of the Court of International Trade (CIT) that affirmed the International Trade Commission's (ITC's) negative injury determinations on remand in the second sunset review of the antidumping duty order on ball bearings from Japan, we revoked the order on ball bearings and parts thereof from Japan and discontinued all ongoing administrative reviews, pending a final and conclusive court decision.[3] On May 16, 2013, the United States Court of Appeals for the Federal Circuit (Federal Circuit) reversed the CIT's decision and ordered the CIT to reinstate the ITC's affirmative material injury determinations.[4] Subsequently, on November 18, 2013, the CIT issued final judgment reinstating the ITC's affirmative injury determinations.[5] Thus, on December 16, 2013 we reinstated the antidumping duty order and resumed all previously discontinued administrative reviews.[6]

Rescission of Review in Part

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, ''in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review.'' In our *Reinstatement Notice,* we informed parties that the deadline to withdraw requests for review was 90 days from the publication of that notice.[7] We received timely withdrawals of requests for review from all firms except Bosch Packaging Technology K.K., Bosch Rexroth Corporation, and Hagglunds Ltd. (collectively, the Robert Bosch Companies).[8] This rescission in part is in accordance with 19 CFR 351.213(d)(1).

Accordingly, the Department intends to issue appropriate assessment instructions to U.S. Customs and Border Protection 15 days after publication of this notice.

Notifications

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(d)(4).

Dated: May 1, 2014.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2014–10510 Filed 5–7–14; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 76 FR 24460 (May 2, 2011).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 76 FR 37781 (June 28, 2011).

[3] *See Ball Bearings and Parts Thereof from Japan and the United Kingdom: Revocation of Antidumping Duty Orders,* 76 FR 41761 (July 15, 2011).

[4] *NSK Corp* v. *United States International Trade Commission,* 716 F.3d 1352 (Fed. Cir. 2013).

[5] *NSK Corp.* v. *United States International Trade Commission,* Court No. 06–334, Slip Op. 2013–143 (CIT November 18, 2013).

[6] *See Ball Bearings and Parts Thereof From Japan and the United Kingdom: Notice of Reinstatement of Antidumping Duty Orders, Resumption of Administrative Reviews, and Advance Notification of Sunset Reviews,* 78 FR 76104 (December 16, 2013) (*Reinstatement Notice*).

[7] Because the 90-day deadline to withdraw was Sunday, March 16, 2014, and the government was closed on Monday, March 17, 2014, due to hazardous weather, the actual deadline for parties to withdraw was Tuesday, March 18, 2014.

[8] On March 27, 2014, the Robert Bosch Companies filed an untimely letter withdrawing their request for review. Because the deadline to withdraw was clearly established in the *Reinstatement Notice,* we did not grant the withdrawal request. *See* April 2, 2014 memorandum to the file from Hermes Pinilla, ''Ball Bearings and Parts Thereof from Japan—Issuance of Antidumping Duty Questionnaire to the Robert Bosch Companies,'' for further discussion.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–560–826]

Monosodium Glutamate From the Republic of Indonesia: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Department) preliminarily determines that monosodium glutamate (MSG) from

the Republic of Indonesia (Indonesia) is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in the Tariff Act of 1930, as amended (the Act). The period of investigation is July 1, 2012, through June 30, 2013. The estimated weighted-average dumping margins of sales at LTFV are shown in the ''Preliminary Determination'' section of this notice. We invite interested parties to comment on this preliminary determination. The final determination will be issued not later than 135 days after publication of this preliminary determination in the **Federal Register**.

DATES: *Effective:* May 8, 2014.

FOR FURTHER INFORMATION CONTACT: Nicholas Czajkowski or Justin Neuman, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1395 and (202) 482–0486, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Investigation

The product covered by this investigation is MSG, whether or not blended or in solution with other products. Specifically, MSG that has been blended or is in solution with other product(s) is included in this scope when the resulting mix contains 15 percent or more of MSG by dry weight.[1]

Methodology

The Department is conducting this investigation in accordance with section 731 of the Act. Export price (EP) and constructed export price (CEP) are calculated in accordance with section 772 of the Act and 19 CFR 351.402. Normal value (NV) is calculated in accordance with section 773 of the Act and 19 CFR 351.403.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.[2] The Preliminary Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at *https://iaaccess.trade.gov,* and is available to all parties in the Department's Central Records Unit, located at room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be found at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Determination

The Department preliminarily determines that MSG from Indonesia is being, or is likely to be, sold in the United States at LTFV, as provided in section 733(b) of the Act.

The Department preliminarily determines that the following estimated weighted-average dumping margins exist:

Exporter or producer	Weighted-average dumping margin (percent)
PT. Cheil Jedang Indonesia	5.61
All Others	5.61

Section 735(c)(5)(A) of the Act provides that the estimated ''all others'' rate shall be an amount equal to the weighted average of the weighted-average dumping margins calculated for the or producers or exporters individually examined, excluding rates that are zero, *de minimis* or determined entirely under section 776 of the Act. Since we calculated a weighted-average dumping margin for only one respondent that was not zero, *de minimis,* or determined entirely under section 776 of the Act, we assigned to all other producers and exporters the rate calculated for PT. Cheil Jedang Indonesia (Cheil Jedang).

Disclosure and Public Comment

We will disclose the calculations performed to parties in this proceeding within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the final verification report is issued in this proceeding and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs. Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and, (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate in a hearing if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce. All documents must be filed electronically using IA ACCESS. An electronically filed request must be received successfully in its entirety by IA ACCESS, by 5:00 p.m. Eastern Time, within 30 days after the date of publication of this notice.[3] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to a request from Cheil Jedang, a respondent in this investigation, we are postponing the final determination.[4] Accordingly, we will issue our final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.[5] Further, Cheil Jedang requested to extend the application of the provisional measures prescribed under section 733(d) of the Act and 19 CFR 351.210(e)(2), from a four-month period to not more than six-months. As a result, suspension of liquidation will be extended accordingly.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of MSG from Indonesia as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date of

[1] For a complete description of the scope of the investigation, *see* Appendix I to this notice.

[2] *See* Memorandum to Paul Piqudo, Assistant Secretary for Enforcement and Compliance, from Christian Marsh, Deputy Assistant Secretary for Antidumping Duty and Countervailing Duty Operations, ''Antidumping Duty Investigation of Monosodium Glutamate from the Republic of Indonesia: Decision Memorandum for the Preliminary Determination,'' dated May 1, 2014 (Preliminary Decision Memorandum).

[3] *See* 19 CFR 351.310(c).

[4] *See* the April 28, 2014, Letter to the Secretary of Commerce, ''Antidumping Duty Investigation of Monosodium Glutamate from Indonesia: Conditional Request to Postpone the Final Determination.''

[5] *See also* 19 CFR 351.210(e).

publication of this notice in the **Federal Register**.

Pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), the Department will instruct CBP to require a cash deposit equal to the preliminary weighted-average amount by which NV exceeds U.S. price,[6] as indicated in the chart above, as follows: (1) The rate for Cheil Jedang will be the weighted-average dumping margin we determine in this preliminary determination; (2) if the exporter is not a firm identified in this investigation, but the producer is, then the rate will be the rate established for the producer of the subject merchandise; (3) the rate for all other producers or exporters will be 5.61 percent. The suspension of liquidation instructions will remain in effect until further notice.

International Trade Commission (ITC) Notification

In accordance with section 733(f) of the Act, we notified the ITC of our preliminary affirmative determination of sales at LTFV. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: May 1, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The scope of this investigation covers monosodium glutamate (''MSG''), whether or not blended or in solution with other products. Specifically, MSG that has been blended or is in solution with other product(s) is included in this scope when the resulting mix contains 15% or more of MSG by dry weight. Products with which MSG may be blended include, but are not limited to, salts, sugars, starches, maltodextrins, and various seasonings. Further, MSG is included in this investigation regardless of physical form (including, but not limited to, substrates, solutions, dry powders of any particle size, or unfinished forms such as MSG slurry), end-use application, or packaging.

MSG has a molecular formula of $C_5H_8NO_4Na$, a Chemical Abstract Service (''CAS'') registry number of 6106–04–3, and a Unique Ingredient Identifier (''UNII'') number of W81N5U6R6U.

Merchandise covered by the scope of this investigation is currently classified in the Harmonized Tariff Schedule (''HTS'') of the United States at subheading 2922.42.10.00. Merchandise subject to the investigation may also enter under HTS subheadings 2922.42.50.00, 2103.90.72.00, 2103.90.74.00, 2103.90.78.00, 2103.90.80.00, and 2103.90.90.91. The tariff classifications, CAS registry number, and UNII number are provided for convenience and customs purposes; however, the written description of the scope is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2014–10637 Filed 5–7–14; 8:45 am]

BILLING CODE 3510–DS–P

[6] *See Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations,* 76 FR 61042 (October 3, 2011).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–992]

Monosodium Glutamate From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, and Postponement of Final Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce (the Department) preliminarily determines that monosodium glutamate (MSG) from the People's Republic of China (PRC) is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided the Tariff Act of 1930, as amended (the Act). The period of investigation is January 1, 2013, through June 30, 2013. The estimated weighted-average dumping margins of sales at LTFV are shown in the ''Preliminary Determination'' section of this notice. We invite interested parties to comment on this preliminary determination. The final determination will be issued not later than 135 days after publication of this preliminary determination in the **Federal Register**.

DATES: *Effective:* May 8, 2014.

FOR FURTHER INFORMATION CONTACT: Milton Koch, Brandon Steele, or Jun Jack Zhao, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2584, (202) 482–4956, or (202) 482–1396, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Investigation

The scope of this investigation covers MSG, whether or not blended or in solution with other products. Specifically, MSG that has been blended or is in solution with other product(s) is included in this scope when the resulting mix contains 15 percent or more of MSG by dry weight.[1]

Scope Comments

In accordance with the *Preamble* to the Department's regulations,[2] a period of time was set aside in our *Initiation Notice* for parties to raise product coverage issues, and we encouraged interested parties to submit comments within 20 calendar days of the signature date of that notice.[3] No scope comments were submitted regarding this investigation.

Methodology

The Department is conducting this antidumping duty investigation in accordance with section 731 of the Act. Export prices (EPs) and constructed export prices (CEPs) are being calculated in accordance with section 772 of the Act. Because the PRC is a non-market economy within the meaning of section 771(18) of the Act, normal value (NV) is calculated in accordance with section 773(c) of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary

[1] *See* Appendix I for a complete description of the scope of this investigation.

[2] *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[3] *See Monosodium Glutamate From the People's Republic of China, and the Republic of Indonesia: Initiation of Antidumping Duty Investigations,* 78 FR 65278 (October 31, 2013) (*Initiation Notice*).

Decision Memorandum.[4] The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at *https://iaaccess.trade.gov,* and is available to all parties in the Department's Central Records Unit, located at room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be found at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Combination Rates

In the *Initiation Notice,* the Department stated that it would calculate combination rates for the respondents that are eligible for a separate rate in this investigation.[5] This practice is described in Policy Bulletin 05.1.[6]

Preliminary Determination

The Department preliminarily determines that MSG from the PRC is being, or is likely to be, sold in the United States at LTFV, as provided in section 733(b) of the Act.

The Department preliminarily determines that the following estimated weighted-average dumping margins exist:

Exporter	Producer	Weighted-average dumping margin (percent)
Langfang Meihua Bio-Technology Co., Ltd./Meihua Group International Trading (Hong Kong) Limited.	Tongliao Meihua Biological SCI–TECH Co., Ltd./Meihua Holdings Group Co., Ltd., Bazhou Branch.	52.24
Fujian Province Jianyang Wuyi MSG Co., Ltd.	Fujian Province Jianyang Wuyi MSG Co., Ltd.	52.24
Neimenggu Fufeng Biotechnologies Co., Ltd.	Neimenggu Fufeng Biotechnologies Co., Ltd.	52.24
Baoji Fufeng Biotechnologies Co., Ltd.	Baoji Fufeng Biotechnologies Co., Ltd.	52.24
PRC-wide Entity *		52.27

* The PRC-wide entity includes Shandong Linghua Monosodium Glutamate Incorporated Company, a mandatory respondent in this investigation.

Preliminary Affirmative Determination of Critical Circumstances

On April 11, 2014, Petitioner filed a timely critical circumstances allegation, pursuant to section 773(e)(1) of the Act and 19 CFR 351.206(c)(1), alleging that critical circumstances exist with respect to imports of MSG from the PRC.[7] We preliminarily determine that critical circumstances exist for the Meihua Group,[8] the separate rate companies,[9] and the PRC-wide entity. A discussion of our determination can be found in the Preliminary Decision Memorandum at the section, ''Critical Circumstances.''

Disclosure and Public Comment

We intend to disclose the calculations performed to parties in this proceeding within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the final verification report is issued in this proceeding and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[10] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and, (3) a table of authorities. The summary should be limited to five pages total, including footnotes.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate in a hearing if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce. All documents must be filed electronically using IA ACCESS. An electronically filed request must be received successfully in its entirety by IA ACCESS, by 5:00 p.m. Eastern Standard Time, within 30 days after the date of publication of this notice.[11] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to a request from the Meihua Group, a respondent in this investigation, we are postponing the final determination.[12] Accordingly, we will issue our final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.[13] Further, the

[4] *See* the Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, ''Decision Memorandum for the Preliminary Determination in the Antidumping Duty Investigation of Monosodium Glutamate from the People's Republic of China,'' dated concurrently with this notice (Preliminary Decision Memorandum) which is hereby adopted by this notice.

[5] *See Initiation Notice,* 78 FR 65282.

[6] *See* Policy Bulletin No. 05.1, regarding ''Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non-Market Economy Countries'' (April 5, 2005) (''Policy Bulletin 05.1''), available at *http://enforcement.trade.gov/policy/bull05-1.pdf.*

[7] *See* Letter to the Secretary of Commerce, ''Monosodium Glutamate from China: Petitioner's Critical Circumstances Allegations,'' dated April 11, 2014. Petitioner is Ajinomoto North America Inc. (Petitioner).

[8] Langfang Meihua Bio-Technology Co., Ltd.; Meihua Group International Trading (Hong Kong) Limited; Tongliao Meihua Biological SCI–TECH Co., Ltd.; and Meihua Holdings Group Co., Ltd., Bazhou Branch (collectively, the Meihua Group).

[9] Fujian Province Jianyang Wuyi MSG Co., Ltd.; Neimenggu Fufeng Biotechnologies Co., Ltd.; and Baoji Fufeng Biotechnologies Co., Ltd. (collectively, the separate rate companies).

[10] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[11] *See* 19 CFR 351.310(c).

[12] *See* Letter to the Secretary of Commerce, ''Monosodium Glutamate from the People's Republic of China: Request for Extension of the Final Determination,'' dated April 23, 2014.

[13] *See also* 19 CFR 351.210(e).

Meihua Group requested to extend the application of the provisional measures prescribed under section 733(d) of the Act and 19 CFR 351.210(e)(2), from a four-month period to not more than six-months. Suspension of liquidation will be extended accordingly.

Suspension of Liquidation

Section 733(e)(2) of the Act provides that, given an affirmative determination of critical circumstances, any suspension of liquidation shall apply to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the later of (a) the date which is 90 days before the date on which the suspension of liquidation was first ordered, or (b) the date on which notice of initiation of the investigation was published. As described above, we preliminarily find that critical circumstances exist for imports produced or exported by the Meihua Group, the separate rate companies, and the PRC-wide entity. For the Meihua Group, the separate rate companies, and the PRC-wide entity, in accordance with section 733(e)(2)(A) of the Act, the suspension of liquidation shall apply to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the publication of this notice.

We will instruct CBP to require a cash deposit for all suspended entries at an *ad valorem* rate equal to the weighted-average dumping margins, as indicated in the chart above.[14] These suspension of liquidation instructions will remain in effect until further notice.

Verification

As provided in section 782(i)(1) of the Act, we intend to verify the information from the Meihua Group in making our final determination.

International Trade Commission (ITC) Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our preliminary affirmative determination of sales at LTFV. Section 735(b)(2) of the Act requires the ITC to make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of MSG, or sales (or the likelihood of sales) for importation, of the merchandise under consideration within 45 days of our final determination.

[14] *See Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations,* 76 FR 61042 (October 3, 2011).

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: May 1, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The scope of this investigation covers monosodium glutamate (MSG), whether or not blended or in solution with other products. Specifically, MSG that has been blended or is in solution with other product(s) is included in this scope when the resulting mix contains 15% or more of MSG by dry weight. Products with which MSG may be blended include, but are not limited to, salts, sugars, starches, maltodextrins, and various seasonings. Further, MSG is included in this investigation regardless of physical form (including, but not limited to, substrates, solutions, dry powders of any particle size, or unfinished forms such as MSG slurry), end-use application, or packaging.

MSG has a molecular formula of $C_5H_8NO_4Na$, a Chemical Abstract Service (CAS) registry number of 6106–04–3, and a Unique Ingredient Identifier (UNII) number of W81N5U6R6U.

Merchandise covered by the scope of this investigation is currently classified in the Harmonized Tariff Schedule (HTS) of the United States at subheading 2922.42.10.00. Merchandise subject to the investigation may also enter under HTS subheadings 2922.42.50.00, 2103.90.72.00, 2103.90.74.00, 2103.90.78.00, 2103.90.80.00, and 2103.90.90.91. The tariff classifications, CAS registry number, and UNII number are provided for convenience and customs purposes; however, the written description of the scope is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2014–10635 Filed 5–7–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement (NAFTA), Article 1904 NAFTA Binational Panel Reviews; Completion of Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Completion of Panel Review.

SUMMARY: Pursuant to the Order of the North American Free Trade Agreement (NAFTA) Binational Panel dated March 18, 2014, the panel review of the Department of Commerce's final determination regarding Bottom Mount Combination Refrigerator-Freezers from Mexico was completed on May 1, 2014.

FOR FURTHER INFORMATION CONTACT: Ellen M. Bohon, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue NW., Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: On March 25, 2014 the binational panel reviewing the U.S. Department of Commerce's final determination concerning Bottom Mount Combination Refrigerator-Freezers from Mexico (NAFTA Secretariat File No. USA–MEX–2012–1904–02) issued an Order granting a Joint Motion to Dismiss Panel Review filed by Samsung Electronics Mexico, S.A. de C.V. and affiliates and LG Electronics Monterrey Mexico, S.A. de C.V. and affiliates and a Motion to Dismiss Panel Review filed by the U.S. Department of Commerce. In its Order, the panel also dismissed as moot the Renewed Motion to Stay filed by Whirlpool Corporation. Pursuant to the panel's Order, the Secretariat was instructed to issue a Notice of Completion of Panel Review on the 31st day following the issuance of the Notice of Final Panel Action, if no request for an Extraordinary Challenge Committee was filed. No such request was filed. Therefore, on the basis of the Panel Order and Rule 80 of the Article 1904 Panel Rules, the Panel Review was completed and the panelists were discharged from their duties effective May 1, 2014.

Dated: May 2, 2014.

Ellen M. Bohon,

United States Secretary, NAFTA Secretariat.

[FR Doc. 2014–10556 Filed 5–7–14; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement (NAFTA), Article 1904 NAFTA Binational Panel Reviews; Decision of Panel

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Decision of Panel.

SUMMARY: On April 29, 2014, the NAFTA Chapter 19 binational panel issued its decision affirming the Final Results of the 2006–2007 administrative review of the antidumping order issued by the U.S. Department of Commerce's International Trade Administration (ITA), with respect to Carbon and Certain Alloy Steel Wire Rod from Canada. Copies of the panel's decision are available from the U.S. Section of the NAFTA Secretariat.

FOR FURTHER INFORMATION CONTACT: Ellen M. Bohon, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter has been conducted in accordance with these Rules.

Panel Decision: On January 16, 2009 Complainants Ivaco Rolling Mills 2004 L.P. and Sivaco Ontario, a division of Sivaco Wire Group 2004 L.P. (''Ivaco''), filed a Request for Panel Review of the Final Results of the 2006–2007 administrative review of the antidumping order issued by the U.S. Department of Commerce's International Trade Administration (ITA), with respect to Carbon and Certain Alloy Steel Wire Rod from Canada.

In its Complaint, filed on February 1, 2009, Ivaco alleged that the ITA had committed two errors: (1) The ITA's decision that Ivaco had made sales to the United States and the home market at a single level of trade was unsupported by substantial evidence and otherwise not in accordance with law and (2) the ITA's decision to calculate Ivaco's overall weighted average dumping margin by setting negative individual dumping margins to zero is unsupported by substantial evidence and otherwise not in accordance with law.

For the reasons set forth in the panel's written decision, and on the basis of the administrative record, the applicable law, the written submissions of the ITA and Ivaco, and the panel hearing held in Washington, DC on September 6, 2012, the panel upheld in its decision the Final Results of the administrative review. Copies of the panel's decision are available from the U.S. Section of the NAFTA Secretariat.

Dated: May 2, 2014.

Ellen M. Bohon,

U.S. Secretary, NAFTA Secretariat.

[FR Doc. 2014–10559 Filed 5–7–14; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Billfish Tagging Report Card

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before July 7, 2014.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to James Wraith, (858) 546–7087 or *james.wraith@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a currently approved information collection. The National Oceanic and Atmospheric Administration's Southwest Fisheries Science Center operates a billfish tagging program. Tagging supplies are provided to volunteer anglers. When anglers catch and release a tagged fish they submit a brief report on the fish and the location of the tagging. The information obtained is used in conjunction with tag returns to determine billfish migration patterns, mortality rates, and similar information useful in the management of the billfish fisheries. This program is authorized under 16 U.S.C. 760(e), Study of migratory game fish; waters; research; purpose.

II. Method of Collection

Information is submitted by mail, via a paper form the size of a postcard.

III. Data

OMB Control Number: 0648–0009.

Form Number: NOAA Form 88–162.

Type of Review: Regular submission (extension of a currently approved collection).

Affected Public: Individuals or households.

Estimated Number of Respondents: 1,000.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 83.

Estimated Total Annual Cost to Public: $0 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and

clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 2, 2014.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2014–10545 Filed 5–7–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Alaska Prohibited Species Donation (PSD) Program

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before July 7, 2014.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Patsy A. Bearden, (907) 586–7008 or *Patsy.Bearden@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a currently approved information collection.

A prohibited species donation (PSD) program for salmon and halibut has effectively reduced regulatory discard of salmon and halibut by allowing fish that would otherwise be discarded to be donated to needy individuals through tax-exempt organizations. Vessels and processing plants participating in the donation program voluntarily retain and process salmon and halibut bycatch. An authorized, tax-exempt distributor, chosen by the National Marine Fisheries Service (NMFS), is responsible for monitoring the retention and processing of fish donated by vessels and processors. The authorized distributor also coordinates the processing, storage, transportation, and distribution of salmon and halibut. The PSD program requires an information collection so that NMFS can monitor the authorized distributors' ability to effectively supervise program participants and ensure that donated fish are properly processed, stored, and distributed.

II. Method of Collection

Respondents have a choice of either electronic or paper forms. Methods of submittal include email of electronic forms and mail of paper forms.

III. Data

OMB Control Number: 0648–0316.

Form Number: None.

Type of Review: Regular submission (extension of a currently approved collection).

Affected Public: Not for-profit institutions.

Estimated Number of Respondents: 1.

Estimated Time per Response: Application to be a NMFS Authorized Distributor, 13 hours.

Estimated Total Annual Burden Hours: 13.

Estimated Total Annual Cost to Public: $0 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 2, 2014.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2014–10544 Filed 5–7–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Alaska Halibut Catch Sharing Plan Survey

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before July 7, 2014.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW, Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Dr. Dan Lew, (530) 752–1746 or *Dan.Lew@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for a new information collection.

Numerous management measures have recently been proposed or implemented that affect recreational charter boat fishing for Pacific halibut off Alaska, including the adoption of a Halibut Catch Sharing Plan (78 FR 75843, December 12, 2013) in International Pacific Halibut Commission Regulatory Areas 2C and 3A that alters the way Pacific halibut is allocated between the guided sport (i.e., the charter sector) and the commercial halibut fishery. The Catch Sharing Plan (CSP) formalizes the annual process of allocating catch between the

commercial sector and charter sector and for determining harvest restrictions in the charter sector (78 FR 75843, December 12, 2013). In addition, the CSP allows leasing of commercial halibut individual fishing quota (IFQ) by eligible charter businesses holding a charter halibut permit (CHP). The IFQ pounds are leased in terms of number of fish, called guided angler fish (GAF), which are determined based on a conversion rate published by the National Marine Fisheries Service (NMFS). Leased GAF can be used by charter businesses to relax harvest restrictions for their angler clients, since the fish caught under the leased GAF would not be subject to the charter sector-specific size and bag limits that may be imposed—though the non-charter sector size and bag limit restrictions (currently two fish of any size per day) would still apply to charter anglers who are not using GAF.

To help inform potential future policy discussions about the CSP, NMFS Alaska Fisheries Science Center plans to conduct a survey that will collect information on general attitudes toward the CSP and the GAF leasing program from Area 2C and Area 3A charter boat businesses (CHP holders), and ask them to indicate their preferences for hypothetically relaxing specific features of the GAF leasing program that are employed in similar types of programs in both fisheries and non-fisheries contexts. This information could provide valuable information to the North Pacific Fishery Management Council in its evaluation of the current features of the CSP and provide information that may help it evaluate adjustments to the CSP. The survey will also provide a broad gauge of attitudes toward the program and its impacts on the charter sector and anglers.

II. Method of Collection

The method of data collection will be a survey of CHP permit holders implemented through a mail questionnaire.

III. Data

OMB Control Number: 0648-xxxx.

Form Number: None.

Type of Review: Regular submission (extension of a currently approved information collection).

Affected Public: Individuals or households; business or other for-profit organizations.

Estimated Number of Respondents: 700.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 350.

Estimated Total Annual Cost to Public: $0 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 2, 2014.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2014–10546 Filed 5–7–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD285

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Application to modify one scientific research permit.

SUMMARY: Notice is hereby given that NMFS has received one scientific research permit application request relating to Pacific salmon. The proposed research is intended to increase knowledge of species listed under the Endangered Species Act (ESA) and to help guide management and conservation efforts. The application may be viewed online at: *https://apps.nmfs.noaa.gov/preview/preview_open_for_comment.cfm.*

DATES: Comments or requests for a public hearing on the applications must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific standard time on June 9, 2014.

ADDRESSES: Written comments on the application should be sent to the Protected Resources Division, NMFS, 1201 NE Lloyd Blvd., Suite 1100, Portland, OR 97232–1274. Comments may also be sent via fax to 503–230–5441 or by email to *nmfs.nwr.apps@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Rob Clapp, Portland, OR (ph.: 503–231–2314), Fax: 503–230–5441, email: *Robert.Clapp@noaa.gov*). Permit application instructions are available from the address above, or online at *https://apps.nmfs.noaa.gov.*

SUPPLEMENTARY INFORMATION:

Species Covered in This Notice

The following listed species are covered in this notice:

Chinook salmon (*Oncorhynchus tshawytscha*): endangered Upper Columbia River (UCR) spring-run.

Steelhead (*O. mykiss*): threatened UCR; threatened Snake River (SR); threatened middle Columbia River (MCR).

Authority

Scientific research permits are issued in accordance with section 10(a)(1)(A) of the ESA (16 U.S.C. 1531 *et. seq*) and regulations governing listed fish and wildlife permits (50 CFR 222–226). NMFS issues permits based on findings that such permits: (1) Are applied for in good faith; (2) if granted and exercised, would not operate to the disadvantage of the listed species that are the subject of the permit; and (3) are consistent with the purposes and policy of section 2 of the ESA. The authority to take listed species is subject to conditions set forth in the permits.

Anyone requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). Such hearings are held at the discretion of the Assistant Administrator for Fisheries, NMFS.

Applications Received

Permit 16329—2M

The Oregon Department of Environmental Quality (DEQ) is seeking to modify a five-year permit that currently allows it to take adult and juvenile fish throughout Oregon. By modifying the permit, they would add adult and juvenile UCR Chinook and steelhead, MCR steelhead, and SR steelhead to the species of fish they may take. The fish would be taken during the course of five possible projects: (1) The

National Streams and Rivers Assessment. This EPA-sponsored survey uses a random sampling design to estimate the health (in terms of water quality and other physical and biological parameters) of streams and rivers around the region and nation. The fish portion of the project looks at species assemblage as an indicator of a system's overall ecological integrity, evaluates presence of invasive fish species, and evaluates toxic contamination of fish tissue. Field work is planned for this project in 2014 and possibly future years and may involve as many as 60 sites. (2) Oregon Toxics Monitoring Program. This program looks at a range of pollutants in water, river sediments, and fish tissues–including current use and legacy pesticides, estrogenic compounds, pharmaceutical and personal care products, metals, and industrial chemicals such as PCBs, dioxins and furans. The species targeted for this work are typically bass and pikeminnow. Survey sites are typically at the downstream portion of larger rivers and tributaries. This work may involve as many as 20 sites per year. (3) Basins Biological Assessments. The DEQ is developing a monitoring program that looks at a range of environmental health indicators (such as fish species) on a basin scale. This work would feed into that effort. (4) Mixing Zone Surveys. Mixing zones are sections of water bodies downstream of municipal and industrial effluent discharges. The DEQ occasionally monitors fish use and health within and outside mixing zones to evaluate how effectively waste treatment protocols and processes are protecting the environment. Mixing zones are typically found in larger rivers. This work may involve as many as 10 sites per year. (5) Spill impact and cleanup effectiveness evaluations. The DEQ occasionally studies water bodies that have received toxic spills. These surveys could potentially occur in any state water body and could involve as many as five sites per year.

The work would benefit fish in a number of different ways–from helping evaluate watershed health to generating information on contaminant concentrations to determining if current water quality protection regulations and methods are sufficiently effective. The DEQ researchers would capture fish using a variety of methods: boat- and backpack electrofishing, hook-and-line angling, and seines. No drugs or anesthesia would be used on the captured fish. The fish would be held very briefly and, except for brief transfers and some minimal measuring and weighing, the animals would not be handled out of water. All fish would be returned to the capture sites as quickly as possible. The researchers do not intend to kill any listed salmonids, but a small number may die as an unintended result of the activities.

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the applications, associated documents, and comments submitted to determine whether the applications meet the requirements of section 10(a) of the ESA and Federal regulations. The final permit decisions will not be made until after the end of the 30-day comment period. NMFS will publish notice of its final action in the **Federal Register**.

Dated: May 5, 2014.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2014–10574 Filed 5–7–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD265

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Region, NMFS (Assistant Regional Administrator), has made a preliminary determination that an Exempted Fishing Permit (EFP) application contains all of the required information and warrants further consideration. This EFP would allow commercial fishing vessels from the Cape Cod Commercial Fishermen's Alliance to possess and land barndoor skate, a prohibited species, for the purpose of collecting scientific data on barndoor skate and investigate a premium market for barndoor skate seafood products. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments must be received on or before May 23, 2014.

ADDRESSES: You may submit written comments by any of the following methods:

- *Email: NMFS.GAR.EFP@noaa.gov.* Include in the subject line ''Comments on Barndoor Skate EFP.''
- *Mail:* John K. Bullard, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on Barndoor Skate EFP.''
- *Fax:* (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Carly Bari, Fisheries Management Specialist, 978–281–9224, *carly.bari@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Cape Cod Commercial Fishermen's Alliance submitted a complete application for an EFP on April 11, 2014. The EFP would authorize 14 vessels to possess and land barndoor skate, which would otherwise be prohibited in accordance with 50 CFR 648.322(e)(1).

The project entitled ''Research into life history characteristics, catch composition, and fishing mortality of barndoor skate (*Dipturus laevis*) in existing non-directed gillnet fisheries and initial analysis and development of market for barndoor skate seafood products,'' would allow fishermen to retain barndoor skate on their Northeast multispecies and monkfish fishing trips to obtain scientific data including where and when barndoor skates are caught, collect barndoor skate length, weight, and sex data, and collect fish health condition data. In addition, vessels would have restricted authorization to land barndoor skate to evaluate if a premium market can be developed for barndoor skate seafood products (primarily wings).

There has been increasing evidence in the Northeast Fisheries Science Center trawl surveys and observed discard data that barndoor skate populations have been recovering. However, the stock is not yet rebuilt. The applicant has requested the exemption to improve the understanding of the barndoor skate resource, and to investigate a premium barndoor skate market without increasing barndoor skate mortality.

Data would be collected by participating vessels using gillnet gear for at least 25 trips during each quarter of the fishing year. The study area would include the late winter/early spring fishing grounds in southern New England and the summer/fall fishing grounds on Georges Bank. All trips would take place in the following statistical areas: 521, 526, 533, 534, 537,

and 541. Biological data would be collected for the first 10 barndoor skate caught for each net hauled, and for the first 50 barndoor skate caught on each trip. For each haul on a research trip, participating vessels would document gear characteristics, haul time, location, depth, air temperature, estimated total catch, catch composition, as well as sex, length, and weight. In addition, a health index protocol developed for skates would be used to characterize the health of barndoor skates that are caught in an attempt to improve the understanding of barndoor skate mortality. A technician would accompany some of the trips to ensure consistency and accuracy of the data collected.

To evaluate a barndoor skate wing market, investigators would track barndoor and non-barndoor skate landings, ex-vessel price, and market volume on a quarterly basis. Efforts will also be made to develop or improve best handling practices to increase product quality and value. All intact barndoor skates, which have no significant visible gear-related trauma, would be measured and returned to the water as quickly as possible. Barndoor skates that are brought on-board moribund or with moderate or extensive trauma will be retained for sale commercially. The applicant states that authorization to land barndoor skates that are in poor condition, which would otherwise be discarded, will not increase the overall barndoor skate mortality. Vessels would be limited to 500 lb (227 kg) of barndoor skate wings (approximately 1,135 lb (515 kg) whole weight) per trip and they would need to be stored and sold separately from other skate products. Barndoor skates caught in excess of the possession limit would be discarded as soon as practicable. The project would be limited to a maximum weight of 168,000 lb (76.2 mt) of barndoor skate wing landings, an amount of barndoor skate deemed necessary to achieve the research objectives, while mitigating potential impacts to the barndoor skate resource.

If approved, the applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 5, 2014.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2014–10593 Filed 5–7–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Recruitment of First Responder Network Authority Board Members

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice.

SUMMARY: The National Telecommunications and Information Administration (NTIA) issues this Notice on behalf of the First Responder Network Authority (FirstNet) as part of the annual process to seek expressions of interest from individuals who would like to serve on the FirstNet Board.[1] Four of the 12 appointments of non-permanent members to the FirstNet Board are expiring in August 2014. The Secretary of Commerce may reappoint individuals to serve on the FirstNet Board provided they have not served two consecutive full three-year terms.[2] NTIA issues this Notice to obtain expressions of interest in the event the Secretary must fill any vacancies arising on the Board. Expressions of interest will be accepted until May 23, 2014.

DATES: Expressions of Interest must be postmarked or electronically transmitted on or before May 23, 2014.

ADDRESSES: Persons wishing to submit expressions of interest as described below should send that information to: Stephen Fletcher, Associate Administrator of NTIA's Office of Public Safety Communications by email to *FirstNetBoard@ntia.doc.gov*; by U.S. mail or commercial delivery service to: Office of Public Safety Communications, National Telecommunications and Information Administration, 1401 Constitution Avenue NW., Room 7324, Washington, DC 20230; or by facsimile transmission to (202) 501–0536. Please note that all material sent via the U.S. Postal Service (including ''Overnight'' or ''Express Mail'') is subject to delivery delays of up to two weeks due to mail security procedures.

FOR FURTHER INFORMATION CONTACT: Stephen Fletcher, Associate Administrator, Office of Public Safety Communications, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Room 7324, Washington, DC 20230; telephone: (202) 482–5802; email: *sfletcher@ntia.doc.gov.* Please direct media inquiries to NTIA's Office of Public Affairs, (202) 482–7002.

SUPPLEMENTARY INFORMATION:

I. Background and Authority

The Middle Class Tax Relief and Job Creation Act of 2012 (Act) created the First Responder Network Authority (FirstNet) as an independent authority within NTIA and charged it with establishing and overseeing a nationwide, interoperable public safety broadband network, based on a single, national network architecture.[3] FirstNet is responsible for, at a minimum, ensuring nationwide standards for use and access of the network; issuing open, transparent, and competitive requests for proposals (RFPs) to build, operate, and maintain the network; encouraging these RFPs to leverage, to the maximum extent economically desirable, existing commercial wireless infrastructure to speed deployment of the network; and managing and overseeing contracts with non-federal entities to build, operate, and maintain the network.[4] FirstNet holds the single public safety license granted for wireless public safety broadband deployment. The FirstNet Board is responsible for making strategic decisions about FirstNet's operations and ensuring the success of the nationwide network.

II. Structure

The FirstNet Board is composed of 15 voting members. The Act names the U.S. Attorney General, the Director of the Office of Management and Budget, and the Secretary of the Department of Homeland Security as permanent members of the Board. The Secretary of Commerce appoints the non-permanent members of the FirstNet Board.[5] The Act requires each Board member to have experience or expertise in at least one of the following substantive areas: public safety, network, technical, and/or

[1] The Middle Class Tax Relief and Job Creation Act of 2012 (Act) created FirstNet as an independent authority within NTIA, directing it to establish a single nationwide interoperable broadband network. Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, 126 Stat. 156 (''Act''), *to be codified* at 47 U.S.C. 1401 *et. seq.* The Act requires that FirstNet be led by a 15-person Board, with the Secretary of Homeland Security, the Attorney General, and the Director of the Office of Management and Budget serving as permanent members of the Board. 47 U.S.C.1424(b)(1).

[2] 47 U.S.C. 1424(c)(2)(A)(ii).

[3] 47 U.S.C. 1422(b).

[4] 47 U.S.C. 1426(b)(1).

[5] 47 U.S.C. 1424(b).

financial.[6] Additionally, the composition of the FirstNet Board must satisfy the other requirements specified in the Act, including that: (i) At least three Board members have served as public safety professionals; (ii) at least three members represent the collective interests of states, localities, tribes, and territories; and (iii) its members reflect geographic and regional, as well as rural and urban, representation.[7] An individual Board member may satisfy more than one of these requirements. The current non-permanent FirstNet Board members are (noting length of term):

- Samuel ''Sam'' Ginn (Chair), telecommunications executive (retired) (Term expires: August 2014)
- Susan Swenson (Vice Chair), telecommunications/technology executive (Term expires: August 2016)
- Barry Boniface, private equity investor and telecommunications executive (Term expires: August 2016)
- Tim Bryan, CEO, National Rural Telecommunications Cooperative (Term expires: August 2015)
- Charles ''Chuck'' Dowd, Assistant Chief, New York City Police Department (Term expires: August 2014)
- F. Craig Farrill, wireless telecommunications executive (Term expires: August 2015)
- Paul Fitzgerald, Sheriff, Story County, Iowa (Term expires: August 2014)
- Jeffrey Johnson, Fire Chief (retired); former Chair, State Interoperability Council, State of Oregon; CEO, Western Fire Chiefs Association (Term expires: August 2016)
- Kevin McGinnis, Chief/CEO, North East Mobile Health Services (Term expires: August 2015)
- Ed Reynolds, telecommunications executive (retired) (Term expires: August 2014)
- Teri Takai, government information technology expert; former CIO, States of Michigan and California (Term expires: August 2016)
- Wellington Webb, Founder, Webb Group International; former Mayor, Denver, Colorado (Term expires: August 2015)

More information about the FirstNet Board is available at *www.firstnet.gov/about/Board.* Board members will be appointed for a term of three years, and Board members may not serve more than two consecutive full three-year terms.

[6] 47 U.S.C. 1424(b)(2)(B).

[7] 47 U.S.C. 1424(b)(2)(A).

III. Compensation and Status as Government Employees

FirstNet Board members are appointed as special government employees. FirstNet Board members are compensated at the daily rate of basic pay for level IV of the Executive Schedule (approximately $155,000 per year).[8] Each Board member must be a United States citizen, cannot be a registered lobbyist, and cannot be a registered agent of, employed by, or receive payments from, a foreign government.

IV. Financial Disclosure and Conflicts of Interest

FirstNet Board members must comply with certain federal conflict of interest statutes and ethics regulations, including some financial disclosure requirements. A FirstNet Board member will generally be prohibited from participating on any particular matter that will have a direct and predictable effect on his or her personal financial interests or on the interests of the appointee's spouse, minor children, or non-federal employer.

V. Selection Process

At the direction of the Secretary of Commerce, NTIA, in consultation with FirstNet, will conduct outreach to the public safety community, state and local organizations, and industry to solicit nominations for candidates to the Board who satisfy the statutory requirements for membership. In addition, by this Notice, the Secretary of Commerce, through NTIA, will accept expressions of interest until May 23, 2014 from any individual, or any organization that wishes to propose a candidate, who satisfies the statutory requirements for membership on the FirstNet Board.

All parties wishing to be considered should submit their full name, address, telephone number, email address, a current resume, and a statement of qualifications that references the Act's expertise, representational, and geographic requirements for FirstNet Board membership, as described in this Notice, along with a statement describing why they want to serve on the FirstNet Board and affirming their ability to take a regular and active role in the Board's work.

The Secretary of Commerce will select FirstNet Board candidates based on the eligibility requirements in the Act and recommendations submitted by NTIA, in consultation with the FirstNet Board's Governance and Personnel Committee. NTIA will recommend candidates based on an assessment of their qualifications as well as their demonstrated ability to work in a collaborative way to achieve the goals and objectives of FirstNet as set forth in the Act. Board candidates will be vetted through the Department of Commerce and may be subject to an appropriate background check for security clearance.

[8] 47 U.S.C. 1424(g).

Dated: May 2, 2014.

Lawrence E. Strickling,

Assistant Secretary for Communications and Information.

[FR Doc. 2014–10562 Filed 5–7–14; 8:45 am]

BILLING CODE 3510–60–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2010–0056]

Agency Information Collection Activities; Proposed Extension of Approval of Information Collection; Comment Request—Safety Standard for Bicycle Helmets

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. chapter 35), the Consumer Product Safety Commission (Commission or CPSC) invites comments on a proposed request for extension of approval of a collection of information relating to the Safety Standard for Bicycle Helmets (OMB No. 3041–0127). The Commission will consider all comments received in response to this notice before requesting an extension of approval of this collection of information from OMB.

DATES: The Office of the Secretary must receive comments not later than July 7, 2014.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2010–0056, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *http://www.regulations.gov.* Follow the instructions for submitting comments. The Commission does not accept comments submitted by electronic mail (email), except through *www.regulations.gov.* The Commission encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Written Submissions: Submit written submissions by mail/hand delivery/courier to: Office of the Secretary, Consumer Product Safety Commission, Room 820, 4330 East West Highway,

Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to: *http://www.regulations.gov.* Do not submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If furnished at all, such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to: *http://www.regulations.gov*, and insert the docket number CPSC–2010–0056, into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: For further information contact: Robert H. Squibb, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; (301) 504–7815, or by email to: *rsquibb@cpsc.gov.*

SUPPLEMENTARY INFORMATION: CPSC seeks to renew the following collection of information:

Title: Safety Standard for Bicycle Helmets.

OMB Number: 3041–0127.

Type of Review: Renewal of collection.

Frequency of Response: On occasion.

Affected Public: Manufacturers and importers of bicycle helmets.

Estimated Number of Respondents: 30 manufacturers and importers will maintain test records of an estimated 200 models total annually, including older models and new models. Testing on bicycle helmets must be conducted for each new production lot and the test records must be maintained for 3 years.

Estimated Time per Response: 200 hours/model to test 40 models (including new prototypes) plus 4 hours for recordkeeping for 200 models annually.

Total Estimated Annual Burden: 8,800 hours (8,000 hours for testing and 800 hours for recordkeeping).

General Description of Collection: In 1998, the Commission issued a safety standard for bicycle helmets (16 CFR part 1203). The standard includes requirements for labeling and instructions. The standard also requires that manufacturers and importers of bicycle helmets subject to the standard issue certificates of compliance based on a reasonable testing program. Every person issuing certificates of compliance must maintain certain records. Respondents must comply with the requirements in 16 CFR part 1203 for labeling and instructions, testing, certification, and recordkeeping.

Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;

—Whether the estimated burden of the proposed collection of information is accurate;

—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and

—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: May 2, 2014.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2014–10488 Filed 5–7–14; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2010–0022]

Agency Information Collection Activities; Proposed Collection; Comment Request; Safety Standard for Toddler Beds

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission (CPSC or Commission) requests comments on a proposed extension of approval of a collection of information under the safety standard for toddler beds, approved previously under OMB Control No. 3041–0150. The Commission will consider all comments received in response to this notice, before requesting an extension of this collection of information from the Office of Management and Budget (OMB).

DATES: Submit written or electronic comments on the collection of information by July 7, 2014.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2010–0022, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *http://www.regulations.gov*. Follow the instructions for submitting comments. The Commission does not accept comments submitted by electronic mail (email), except through *www.regulations.gov*. The Commission encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Written Submissions: Submit written submissions in the following way: mail/hand delivery/courier to: Office of the Secretary, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to: *http://www.regulations.gov*. Do not submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If furnished at all, such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to: *http://www.regulations.gov*, and insert the docket number, CPSC–2010–0022, into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Robert H. Squibb, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; (301) 504–7815, or by email to: *rsquibb@cpsc.gov*.

SUPPLEMENTARY INFORMATION: CPSC seeks to renew the following currently approved collection of information:

Title: Safety Standard for Toddler Beds.

OMB Number: 3041–0150.

Type of Review: Renewal of collection.

Frequency of Response: On occasion.

Affected Public: Manufacturers and importers of toddler beds.

Estimated Number of Respondents: 78 firms supply toddler beds with an estimated 10 models/firm annually.

Estimated Time per Response: 1 hour/model associated with marking, labeling, and instructional requirements.

Total Estimated Annual Burden: 780 hours (78 firms × 10 models × 1 hour).

General Description of Collection: The Commission issued a safety standard for toddler beds (16 CFR part 1217) in 2011, which was revised in 2013. Among other requirements, the standard requires manufacturers, including importers, to meet the collection of information requirements for marking, labeling, and instructional literature for toddler beds.

Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;

—Whether the estimated burden of the proposed collection of information is accurate;

—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and

—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: May 5, 2014.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2014–10564 Filed 5–7–14; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF ENERGY

U.S. Energy Information Administration

Agency Information Collection Extension

AGENCY: U.S. Energy Information Administration (EIA), Department of Energy.

ACTION: Agency Information Collection Activities: Information Collection Extension; Notice and Request for Comments.

SUMMARY: This notice pertains to Form EIA–877, ''Winter Heating Fuels Telephone Survey,'' which is part of EIA's Petroleum Marketing Program. EIA is proposing to expand the number of states that participate in the State Heating Oil and Propane Program (SHOPP) using Form EIA–877. No changes are proposed for the remaining survey forms within this collection. The following forms comprise the Petroleum Marketing collection:

EIA–14, ''Refiners' Monthly Cost Report;''
EIA–182, ''Domestic Crude Oil First Purchase Report;''
EIA–782A, ''Refiners'/Gas Plant Operators' Monthly Petroleum Product Sales Report;''
EIA–782C, ''Monthly Report of Prime Supplier Sales of Petroleum Products Sold For Local Consumption;''
EIA–821, ''Annual Fuel Oil and Kerosene Sales Report;''
EIA–856, ''Monthly Foreign Crude Oil Acquisition Report;''
EIA–863, ''Petroleum Product Sales Identification Survey;''
EIA–877, ''Winter Heating Fuels Telephone Survey;''
EIA–878, ''Motor Gasoline Price Survey;''
EIA–888, ''On-Highway Diesel Fuel Price Survey''.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments regarding this proposed information collection must be received on or before July 7, 2014. If you anticipate difficulty in submitting comments within that period, contact the person listed in **ADDRESSES** as soon as possible.

ADDRESSES: Written comments may be sent to Ms. Marcela Rourk, U.S. Department of Energy, U.S. Energy Information Administration, Mail Stop EI–25, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585. To ensure receipt of the comments by the due date, submission by email (*Marcela.Rourk@eia.gov*) is recommended. Alternatively, Ms. Rourk may be contacted by telephone at 202–586–4412.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Ms. Marcela Rourk at the contact information listed above. The forms and instructions, along with related information on this clearance package, can be viewed at *http://www.eia.gov/survey/notice/marketing2014.cfm*.

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) OMB No. 1905–0174; (2) Information Collection Request Title: Petroleum Marketing Program; (3) Type of Request: revision of a currently approved collection; (4) Purpose: The Federal Energy Administration Act of 1974 (15 U.S.C. 761 *et seq.*) and the DOE Organization Act (42 U.S.C. 7101 *et seq.*) require EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer term domestic demands.

EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with EIA. Also, EIA will later seek approval for this collection by the Office of Management and Budget (OMB) under Section 3507(a) of the Paperwork Reduction Act of 1995.

EIA's petroleum marketing survey forms collect volumetric and price information needed for determining the supply of and demand for crude oil and refined petroleum products. These surveys provide a basic set of data pertaining to the structure, efficiency, and behavior of petroleum markets. These data are published by EIA on its Web site, *http://www.eia.gov,* as well as in publications such as the *Monthly Energy Review (http://www.eia.gov/totalenergy/data/monthly/), Annual Energy Review (http://www.eia.gov/totalenergy/data/annual/), Petroleum Marketing Monthly (http://www.eia.gov/oil_gas/petroleum/data_publications/petroleum_marketing_monthly/pmm.html), Weekly Petroleum Status Report (http://www.eia.gov/oil_gas/petroleum/data_publications/weekly_petroleum_status_report/wpsr.html), and the International Energy Outlook (http://www.eia.gov/forecasts/ieo/)*; (4a) Proposed Changes to Information Collection: (1) Expand collection of weekly propane data on EIA–877,

''Winter Heating Fuels Telephone Survey'' to additional states; (2) Expand the Winter Heating Fuels Telephone Survey (EIA-877) from 24 to 34 states and continue collection of data from October through mid-March. This survey collects weekly data on retail prices of No. 2 heating oil and propane. These data are used to assess hardships experienced by heating oil and propane users during periods of critical short supplies. The survey is a cooperative data collection effort between EIA and the states participating in the survey; (5) Annual Estimated Number of Respondents: 12,203 Respondents; (6) Annual Estimated Number of Total Responses: 112,911; (7) Annual Estimated Number of Burden Hours: 56,811 hours; (8) Annual Estimated Reporting and Recordkeeping Cost Burden: EIA estimates that there are no additional costs to respondents associated with the surveys other than the costs associated with the burden hours.

Authority: Section 13(b) of the Federal Energy Administration Act of 1974, Pub. L. 93–275, codified as 15 U.S.C. 772(b)

Issued in Washington, DC, on May 1, 2014.

Stephen J. Harvey,

Assistant Administrator for Energy Statistics, U.S. Energy Information Administration.

[FR Doc. 2014–10573 Filed 5–7–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

U.S. Energy Information Administration

Agency Information Collection Extension With Changes

AGENCY: U.S. Energy Information Administration (EIA), U.S. Department of Energy.

ACTION: Notice and Request for OMB review and comment.

SUMMARY: The EIA is soliciting comments on the proposed revision and three-year extension of the surveys in the Natural Gas Data Collection Program Package under OMB Control No. 1905–0175.

The surveys covered by this request include:

- Form EIA–176, ''Annual Report of Natural and Supplemental Gas Supply and Disposition''
- EIA–191, ''Monthly Underground Gas Storage Report''
- EIA–757, ''Natural Gas Processing Plant Survey''
- EIA–857, ''Monthly Report of Natural Gas Purchases and Deliveries to Consumers''
- EIA–910, ''Monthly Natural Gas Marketer Survey''
- EIA–912, ''Weekly Underground Natural Gas Storage Report''

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments regarding this proposed information collection must be received on or before July 7, 2014. If you anticipate difficulty in submitting comments within that period, contact the person listed in **ADDRESSES** as soon as possible.

ADDRESSES: Send comments to Ms. Amy Sweeney, Natural Gas Downstream Team, Office of Oil, Gas, and Coal Supply Statistics, Energy Information Administration. To ensure receipt of the comments by the due date, submission by fax (202–586–1076) or email (*amy.sweeney@eia.gov*) is recommended. The mailing address is Ms. Amy Sweeney, Energy Information Administration, U.S. Department of Energy, 1000 Independence Ave. SW., EI–24, Washington, DC 20585. Also, Ms. Sweeney may be contacted by telephone at 202–586–2627.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of any forms and instructions should be directed to Ms. Sweeney at the address listed above. Also, the draft forms and instructions are available on the EIA Web site at *http://www.eia.gov/survey/notice/ngdownstreamforms2015.cfm.*

SUPPLEMENTARY INFORMATION: The Federal Energy Administration Act of 1974 (Pub. L. 93–275, 15 U.S.C. 761 et seq.) and the DOE Organization Act (Pub. L. 95–91, 42 U.S.C. 7101 et seq.) require EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic statistics. This information is used to assess the adequacy of energy resources to meet both near- and longer-term domestic demands.

EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3501 et seq.), provides the general public and other Federal agencies with opportunities to comment on the collection of energy information conducted by or in conjunction with EIA. Comments help EIA prepare data requests that maximize the utility of the information collected and assess the impact of collection requirements on the public. As required by section 3507(h)(1) of the Paperwork Reduction Act of 1995, EIA will later seek approval for this collection by the Office of Management and Budget (OMB).

The natural gas surveys included in the Natural Gas Data Collection Program Package collect information on natural gas production, underground storage, supply, processing, transmission, distribution, consumption by sector, and consumer prices. This information is used to support public policy analyses of the natural gas industry and estimates generated from data collected on these surveys. The statistics generated from these surveys are posted to the EIA Web site (*http://www.eia.gov*) and in various EIA products, including the *Weekly Natural Gas Storage Report* (WNGSR), *Natural Gas Monthly* (NGM), *Natural Gas Annual* (NGA), *Monthly Energy Review* (MER), *Short-Term Energy Outlook* (STEO), *Annual Energy Outlook* (AEO), and *Annual Energy Review* (AER). Respondents to EIA natural gas surveys include underground storage operators, transporters, marketers, and distributors. Each form included as part of this package is discussed in detail below.

Please refer to the proposed forms and instructions for more information about the purpose, who must report, when to report, where to submit, the elements to be reported, detailed instructions, provisions for confidentiality, and uses (including possible nonstatistical uses) of the information. For instructions on obtaining materials, see the **FOR FURTHER INFORMATION CONTACT** section.

EIA is requesting a three-year extension of collection authority for each of the above-referenced surveys and will make minor changes to the forms and instructions to provide clarity. Data confidentiality procedures for protecting the identifiability of submitted data remain unchanged for all forms with the exception of a portion of Form EIA–191 as referenced below. In addition, EIA is proposing the following changes:

Form EIA–176, ''*Annual Report of Natural and Supplemental Gas Supply and Disposition*''

(1) *Type of Request:* Extension, with changes, of a currently approved collection.

(2) *Purpose:* Form EIA–176, ''Annual Report of Natural and Supplemental Gas Supply and Disposition,'' collects data on natural, synthetic, and other supplemental gas supplies, disposition, and certain revenues by state. The data appear in the EIA publications, *Monthly Energy Review, Natural Gas Annual,* and *Natural Gas Monthly.* The proposed changes include:

• In Part 3, EIA is proposing to collect information on the price of compressed natural gas (CNG) for natural gas local distribution companies that sell CNG to the public. This information will provide information on retail prices of CNG. CNG is a growing segment of the natural gas industry that is not represented in EIA's natural gas retail price series.

• In Parts 4 and 6, which address sources of natural gas supply and disposition, respectively, EIA is proposing to add daily capacity, in million cubic feet per day, of underground storage injections and withdrawals (i.e., maximum daily injection rates and maximum daily withdrawal rates).

• EIA is also proposing to add capacity of interstate pipeline receipt and delivery points at state and U.S. borders, and the maximum daily injection and withdrawal rates of above-ground natural gas storage. Currently, EIA collects volumetric data for each of these data elements but would like to collect the related maximum daily rates for each. This will allow for a better understanding of to what extent natural gas injection and withdrawal rates at storage sites as well as movements at interstate and U.S. border points can potentially constrain the natural gas market's ability to supply gas at various locations during peak usage periods.

• Finally, in Part 5, EIA is proposing to collect the capacity of liquefied natural gas (LNG) marine terminals to gain a better understanding of the extent to which these storage assets are being utilized and are able to supply the market during periods of peak natural gas demand.

(3) *Estimated Number of Survey Respondents:* 2,012 respondents.

(4) *Annual Estimated Number of Total Responses:* The annual number of total responses is 2,012.

(5) *Annual Estimated Number of Burden Hours:* The annual estimated burden is 24,144 hours.

(6) *Annual Estimated Reporting and Recordkeeping Cost Burden:* Additional costs to respondents are not anticipated beyond costs associated with response burden hours.

Form EIA–191, ''*Monthly Underground Gas Storage Report*''

(1) *Type of Request:* Extension, with changes, of a currently approved collection.

(2) *Purpose:* Form EIA–191, ''Monthly Underground Gas Storage Report,'' collects data on the operations of all active underground storage facilities. The data appear in the EIA publications *Monthly Energy Review, Natural Gas Annual,* and *Natural Gas Monthly.* EIA is proposing to make the following changes to the form:

• EIA is proposing to add maximum daily injection rate to Part 3 of the monthly Form EIA–191. Data on the maximum rate that natural gas can be injected into storage facilities will provide information on how quickly storage assets can be refilled. This has become increasingly important for assessing market supply conditions given the increasing reliance on underground storage to balance daily supply and demand during the peaks of both the heating and refill season.

• EIA is also proposing to collect the quantities of natural gas consumed for compression at storage sites each month. This will allow for more accurate estimates of the fuel used at underground storage sites which may not be adequately represented in EIA's monthly and annual data depicting the supply and demand balance of natural gas in the United States.

• To reduce reporting burden EIA is proposing to discontinue two categories regarding Field Status: ''Depleting;'' and ''Other.'' EIA will use only two categories, ''Active'' and ''Inactive.'' The category ''Inactive'' is more descriptive and replaces the Field Status category label of ''Abandoned.'' The ''Depleting'' and ''Other'' categories are rarely used by reporting companies and collapsing these categories into ''Inactive'' will not cause a loss in data utility, as the same data will still be reported, albeit in a single category.

• Finally, EIA is proposing to make public reported values for monthly base gas levels reported in Part 4. This information will enhance the utility of the underground storage information already available to the public pertaining to capacity and working gas capacity and also indicate another source of supply during times of sustained high demand. The current confidentiality protection covering the other information reported in Part 4, including monthly working gas, total gas in storage, and injections and withdrawals into storage, will be retained. EIA will continue to publish, in disaggregated form, information collected in Part 3 of Form EIA–191, including storage field name and type, reservoir name, location, working gas and total storage field capacity, maximum deliverability and the newly proposed maximum injection rate. On its Web site, EIA currently releases this information at the field level through its *Natural Gas Annual Respondent Query System.* EIA is seeking comment on whether the proposal to include field-level base gas with the currently available information on field-level working gas and total gas field capacity will cause competitive harm to storage operators.

(3) *Estimated Number of Survey Respondents:* There are approximately 122 respondents.

(4) *Annual Estimated Number of Total Responses:* The annual estimated number of total responses is 1,464.

(5) *Annual Estimated Number of Burden Hours:* The annual estimated burden is 3,806 hours.

(6) *Annual Estimated Reporting and Recordkeeping Cost Burden:* Additional costs to respondents are not anticipated beyond costs associated with response burden hours.

Form EIA–757, ''*Natural Gas Processing Plant Survey*''

(1) *Type of Request:* Extension, with changes, of a currently approved collection.

(2) *Purpose:* Form EIA–757, ''Natural Gas Processing Plant Survey,'' collects information on the capacity, status, and operations of natural gas processing plants, and monitors constraints of natural gas processing plants during periods of supply disruption in areas affected by an emergency, such as a hurricane. Schedule A of the EIA–757 is collected no more than every three years to collect baseline operating and capacity information from all respondents and Schedule B is activated as needed and collected from a sample of respondents in affected areas as needed. Schedule A was most recently conducted in 2012 and Schedule B was most recently activated in 2012 for Hurricane Isaac with a sample of approximately 20 plants. EIA is proposing to continue the collection of the same data elements on Form EIA–757 Schedules A and B in their present form with the following change to:

• EIA is proposing to eliminate two elements from Schedule A, annual average total plant capacity and annual average natural gas flow at plant inlet,

as this information will be duplicative of information to be collected on a proposed new survey of natural gas processing plants, Form EIA–915, to be submitted under a separate OMB Control Number.

(3) *Estimated Number of Survey Respondents:* Schedule A: 500; Schedule B: 20.

(4) *Annual Estimated Number of Total Responses:* Schedule A is used to collect information once every three years. Therefore, the annual estimated number of total responses for Schedule A is 167. The annual estimated number of total responses for Schedule B is 7. Annual Estimated Number of Burden Hours: The annual estimated burden for Schedule A is 84 hours. The annual estimated burden for Schedule B is 105 hours.

(5) *Annual Estimated Reporting and Recordkeeping Cost Burden:* Additional costs to respondents are not anticipated beyond costs associated with response burden hours.

Form EIA–857, ''*Monthly Report of Natural Gas Purchases and Deliveries to Consumers*''

(1) *Type of Request:* Extension, with change, of a currently approved collection.

(2) *Purpose:* Form EIA–857, ''Monthly Report of Natural Gas Purchases and Deliveries to Consumers,'' collects data on the quantity and cost of natural gas delivered to distribution systems and the quantity and revenue of natural gas delivered to end-use consumers by market sector, on a monthly basis by state. The data appear in the EIA publications, *Monthly Energy Review, Natural Gas Annual,* and *Natural Gas Monthly.* EIA is proposing the following change:

• EIA is proposing to add a new question to the form that asks whether the reporting company is including any adjustments to prior periods in their current monthly reporting. Reporting companies frequently make adjustments to correct data previously submitted in prior periods that skew the current month's reporting and EIA would like to propose this mechanism to more easily identify this phenomenon and address it proactively with the reporting companies.

(3) *Estimated Number of Survey Respondents:* 310 respondents each month.

(4) *Annual Estimated Number of Total Responses:* The annual estimated number of total responses is 3,720.

(5) *Annual Estimated Number of Burden Hours:* The annual estimated burden is 13,020 hours.

(6) *Annual Estimated Reporting and Recordkeeping Cost Burden:* Additional costs to respondents are not anticipated beyond costs associated with response burden hours.

Form EIA–910, ''*Monthly Natural Gas Marketer Survey*''

(1) *Type of Request:* Extension, with changes, of a currently approved collection.

(2) *Purpose:* Form EIA–910, ''Monthly Natural Gas Marketer Survey,'' collects information on natural gas sales from marketers in selected states that have active customer choice programs. EIA is requesting information on the volume and revenue for natural gas commodity sales and any receipts for distribution charges and taxes associated with the sale of natural gas. EIA is proposing to continue Form EIA–910 in its present form with no changes to the elements collected or geographic coverage.

(3) *Estimated Number of Survey Respondents:* There are approximately 210 respondents each month.

(4) *Annual Estimated Number of Total Responses:* The annual estimated number of total responses is 2,520.

(5) *Annual Estimated Number of Burden Hours:* The annual estimated burden is 5,040 hours.

(6) *Annual Estimated Reporting and Recordkeeping Cost Burden:* Additional costs to respondents are not anticipated beyond costs associated with response burden hours.

Form EIA–912, ''*Weekly Underground Natural Gas Storage Report*''

(1) *Type of Request:* Extension, with changes, of a currently approved collection.

(2) *Purpose:* Form EIA–912, ''*Weekly Underground Natural Gas Storage Report*,'' collects information on weekly inventories of natural gas in underground storage facilities. The proposed changes include an additional data element as well as expanded geographic categories for working gas collection and publication in the Lower 48 states:

• Instead of dividing the states into three regions, the East, West and Producing Regions, EIA is proposing to collect data in five regions by further breaking out the current regions. The states currently included in the Producing region will remain unchanged but the region will now be referred to as the South Central region. The South Central region will continue to have two subcategories for the different storage technologies prevalent in the region, salt and non-salt facilities. Four additional regions that further break out the current East and West regions will be added in order to enhance the analysis and usability of the data. The new geographic regions are defined in the following table:

Current EIA–912 regions	Proposed EIA–912 regions
Producing Region: Alabama, Arkansas, Kansas, Louisiana, Mississippi, New Mexico, Oklahoma, and Texas.	South Central Region: Alabama, Arkansas, Kansas, Louisiana, Mississippi, New Mexico, Oklahoma, and Texas.
East Region: Connecticut, Delaware, District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Massachusetts, Maryland, Maine, Michigan, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, Wisconsin, and West Virginia.	East Region: Connecticut, Delaware, District of Columbia, Florida, Georgia, Kentucky, Massachusetts, Maryland, Maine, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, and West Virginia. Midwest Region: Illinois, Indiana, Iowa, Michigan, Missouri, and Wisconsin.
West Region: Arizona, California, Colorado, Idaho, Minnesota, Montana, Nevada, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming.	Mountain Region: Arizona, Colorado, Idaho, Minnesota, Montana, Nebraska, Nevada, North Dakota, South Dakota, Utah, and Wyoming. Pacific Region: California, Oregon, and Washington.

• EIA is also proposing a new data element, Net Withdrawals of Working Gas into and out of Storage, which will be reported as weekly withdrawals of working gas in excess of injections. This new element will directly collect the net flow of working gas into or out of storage inventory on a weekly basis, a statistic of great interest by the natural gas industry. Currently, the Weekly Natural Gas Storage Report reports a proxy for weekly net withdrawals by calculating the net change of working gas levels from week to week. However, collecting the net flow or Net Withdrawals of Working Gas into and out of Storage will make weekly movements explicit instead of derived by the difference between inventory levels. Further, direct collection of the weekly net flow into or out of working gas inventories will supplement the information on working gas inventories currently collected by making a clearer distinction between net flows and reclassifications between base and working gas.

• Finally, EIA is proposing two changes to its current Weekly Natural Gas Storage Report *revision policy.* The first proposed change would reduce the threshold for published revisions from 7 billion cubic feet (Bcf) to 4 Bcf. Under the proposed revision policy, revisions will be announced in the regularly scheduled release, when the sum of reported changes is at least 4 Bcf at either a regional or national level. Second, EIA is also proposing to amend the policy addressing the unscheduled release of revisions. Under the current policy, an unscheduled release of revised data will occur when the cumulative effect of respondent submitted data changes or corrections is at least 10 Bcf for the current or prior report week. Under the proposed policy, the unscheduled release of revisions to weekly estimates of working gas held in underground storage will occur when the cumulative sum of data changes or corrections to working gas and the net change between the two most recent report weeks is at least 10 Bcf. The proposed change leaves the 10-Bcf threshold, as well as the current out-of-cycle release procedures intact but will further require that the revision have an impact of 10 Bcf or more on the reported net change between the two most recent reports weeks. For example, if one or more respondents submits changes totaling 10 Bcf to previously submitted data but the changes are the result of errors that have been accumulating over several weeks and do not affect flows of working natural gas into or out of storage in the most recent two reported weekly periods by more than 10 Bcf, the unscheduled data release will not occur and the revisions will be published with the next regularly scheduled release.

(3) *Estimated Number of Survey Respondents:* There are approximately 85 respondents every week.

(4) *Annual Estimated Number of Total Responses:* The annual estimated number of total responses is 4,420.

(5) *Annual Estimated Number of Burden Hours:* The annual estimated burden is 4,420 hours.

(6) *Annual Estimated Reporting and Recordkeeping Cost Burden:* Additional costs to respondents are not anticipated beyond costs associated with response burden hours.

Authority: Section 13(b) of the Federal Energy Administration Act of 1974, Pub. L. 93–275, codified at 15 U.S.C. 772(b).

Issued in Washington, DC, on May 2, 2014.

Stephen J. Harvey,

Assistant Administrator for Energy Statistics, U.S. Energy Information Administration.

[FR Doc. 2014–10571 Filed 5–7–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1982–008*; ER10–1253–007; ER10–1246–007; ER10–1252–007.*

Applicants: Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., Consolidated Edison Energy, Inc., Consolidated Edison Solutions, Inc.

Description: Supplement to December 18, 2013 Triennial Market Power Analysis in Northeast region of the Con Edison Companies.

Filed Date: 4/30/14.

Accession Number: 20140430–5590.

Comments Due: 5 p.m. E.T. 5/21/14.

Docket Numbers: ER12–1436–006*; ER14–152–001; ER14–153–001; ER14–154–001; ER13–1793–003; ER10–3300–006; ER13–2386–001; ER10–3099–007; ER12–1260–005; ER10–2329–003.*

Applicants: Eagle Point Power Generation LLC, Elgin Energy Center, LLC, Gibson City Energy Center, LLC, Grand Tower Energy Center, LLC, Hazle Spindle, LLC, La Paloma Generating Company, LLC, Lakeswind Power Partners, LLC, RC Cape May Holdings, LLC, Stephentown Spindle, LLC, Vineland Energy LLC.

Description: Supplement to February 27, 2014 Notice of Change in Status of the Rockland Sellers.

Filed Date: 3/28/14.

Accession Number: 20140328–5209.

Comments Due: 5 p.m. E.T. 5/22/14.

Docket Numbers: ER14–727–001.

Applicants: ISO New England Inc.

Description: Demand Response Baseline Changes Compliance Filing to be effective N/A.

Filed Date: 5/1/14.

Accession Number: 20140501–5128.

Comments Due: 5 p.m. E.T. 5/22/14.

Docket Numbers: ER14–1817–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: 2014–04–30_ER14–000 RSG Exemptions during emergencies to be effective 5/1/2014.

Filed Date: 4/30/14.

Accession Number: 20140430–5469.

Comments Due: 5 p.m. E.T. 5/21/14.

Docket Numbers: ER14–1818–000.

Applicants: Edison Mission Marketing & Trading, LLC.

Description: Notice of Succession and Revisions to Market-Based Rate Tariff to be effective 5/1/2014.

Filed Date: 4/30/14.

Accession Number: 20140430–5471.

Comments Due: 5 p.m. E.T. 5/21/14.

Docket Numbers: ER14–1819–000.

Applicants: Southwestern Public Service Company.

Description: 4–30–14_RS114–117 Consent Agrmts to be effective 5/1/2014.

Filed Date: 4/30/14.

Accession Number: 20140430–5478.

Comments Due: 5 p.m. E.T. 5/21/14.

Docket Numbers: ER14–1820–000.

Applicants: NRG Power Marketing LLC.

Description: Revised Market-Based Rate Tariff to be effective 5/1/2014.

Filed Date: 4/30/14.

Accession Number: 20140430–5484.

Comments Due: 5 p.m. E.T. 5/21/14.

Docket Numbers: ER14–1821–000.

Applicants: GenOn Energy Management, LLC.

Description: Revised Market-Based Rate Tariff to be effective 5/1/2014.

Filed Date: 4/30/14.

Accession Number: 20140430–5485.

Comments Due: 5 p.m. E.T. 5/21/14.

Docket Numbers: ER14–1822–000.

Applicants: New York Independent System Operator, Inc.

Description: Unexecuted service agreement between NYISO and TCR to be effective 5/1/2014.

Filed Date: 4/30/14.

Accession Number: 20140430–5488.

Comments Due: 5 p.m. E.T. 5/21/14.

Docket Numbers: ER14–1823–000.

Applicants: Energy Plus Holdings LLC.

Description: Revised Market-Based Rate Tariff to be effective 5/1/2014.
Filed Date: 4/30/14.
Accession Number: 20140430–5491.
Comments Due: 5 p.m. E.T. 5/21/14.
Docket Numbers: ER14–1824–000.
Applicants: CP Power Sales Twenty, L.L.C.
Description: Revised Market-Based Rate Tariff to be effective 5/1/2014.
Filed Date: 4/30/14.
Accession Number: 20140430–5495.
Comments Due: 5 p.m. E.T. 5/21/14.
Docket Numbers: ER14–1825–000.
Applicants: Hardwood Energy, LLC.
Description: Cancellation of MBR Tariff to be effective 5/1/2014.
Filed Date: 4/30/14.
Accession Number: 20140430–5497.
Comments Due: 5 p.m. E.T. 5/21/14.
Docket Numbers: ER14–1826–000.
Applicants: California Power Exchange Corporation.
Description: Rate Filing for Rate Period 25 to be effective 7/1/2014.
Filed Date: 4/30/14.
Accession Number: 20140430–5530.
Comments Due: 5 p.m. E.T. 5/21/14.
Docket Numbers: ER14–1827–000.
Applicants: RRI Energy Services, LLC.
Description: Revised Market-Based Rate Tariff to be effective 5/1/2014.
Filed Date: 4/30/14.
Accession Number: 20140430–5536.
Comments Due: 5 p.m. E.T. 5/21/14.
Docket Numbers: ER14–1828–000.
Applicants: CP Power Sales Nineteen, L.L.C.
Description: Revised Market-Based Rate Tariff to be effective 5/1/2014.
Filed Date: 4/30/14.
Accession Number: 20140430–5539.
Comments Due: 5 p.m. E.T. 5/21/14.
Docket Numbers: ER14–1829–000.
Applicants: CP Power Sales Seventeen, L.L.C.
Description: Revised Market-Based Rate Tariff to be effective 5/1/2014.
Filed Date: 4/30/14.
Accession Number: 20140430–5540.
Comments Due: 5 p.m. E.T. 5/21/14.
Docket Numbers: ER14–1830–000.
Applicants: Green Mountain Energy Company.
Description: Revised Market-Based Rate Tariff to be effective 5/1/2014.
Filed Date: 4/30/14.
Accession Number: 20140430–5541.
Comments Due: 5 p.m. E.T. 5/21/14.
Docket Numbers: ER14–1831–000.
Applicants: Virginia Electric and Power Company, PJM Interconnection, L.L.C.
Description: Dominion submits revisions to PJM OATT Att H–16A re ADIT to be effective 5/1/2014.
Filed Date: 4/30/14.
Accession Number: 20140430–5545.
Comments Due: 5 p.m. E.T. 5/21/14.
Docket Numbers: ER14–1832–000.
Applicants: Duke Energy Florida, Inc.
Description: Duke Energy Florida, Inc. submits tariff filing per 35.13(a)(2)(iii: DEF IA Annual Cost Factor Update to be effective 5/1/2014.
Filed Date: 5/1/14.
Accession Number: 20140501–5074.
Comments Due: 5 p.m. E.T. 5/22/14.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 1, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–10583 Filed 5–7–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC14–61–000.
Applicants: New Harquahala Generating Company, LLC, New Athens Generating Company, LLC, Millennium Power Partners, L.P., MACH Gen, LLC.
Description: Response to Request for Additional Information of MACH Gen, LLC, et al.
Filed Date: 5/1/14.
Accession Number: 20140501–5281.
Comments Due: 5 p.m. ET 5/8/14.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2298–005.
Applicants: Enserco Energy LLC.
Description: Amendment to Notice of Change in Status to be effective 6/11/2014.
Filed Date: 5/1/14.
Accession Number: 20140501–5199.
Comments Due: 5 p.m. ET 5/22/14.
Docket Numbers: ER11–2154–004.
Applicants: Twin Eagle Resource Management, LLC.
Description: Amendment to Change in Status to be effective 6/11/2014.
Filed Date: 5/1/14.
Accession Number: 20140501–5198.
Comments Due: 5 p.m. ET 5/22/14.
Docket Numbers: ER13–1857–000*; EL14–3–000*.
Applicants: Idaho Power Company.
Description: Supplement to April 3, 2014 Response to request for additional information regarding delivered price test analysis filed on November 7, 2013 of Idaho Power Company.
Filed Date: 4/29/14.
Accession Number: 20140429–5098.
Comments Due: 5 p.m. ET 5/20/14.
Docket Numbers: ER14–776–003.
Applicants: Ohio Valley Electric Corporation.
Description: Ohio Valley Electric Corporation submits tariff filing per 35: Amendment to Point to Point Transmission Service to be effective 11/12/2013.
Filed Date: 5/1/14.
Accession Number: 20140501–5272.
Comments Due: 5 p.m. ET 5/22/14.
Docket Numbers: ER14–1245–000.
Applicants: FirstEnergy Solutions Corp.
Description: Motion of FirstEnergy Solutions Corp. for Shortened Notice Period for the April 29, 2014 submission.
Filed Date: 4/30/14.
Accession Number: 20140430–5619.
Comments Due: 5 p.m. ET 5/12/14.
Docket Numbers: ER14–1630–002.
Applicants: Mantua Creek Solar, LLC.
Description: Mantua Creek Solar, LLC submits tariff filing per 35.17(b): Mantua Creek Solar, LLC Amendment to Application for MBR and Tariff to be effective 4/1/2014.
Filed Date: 5/1/14.
Accession Number: 20140501–5303.
Comments Due: 5 p.m. ET 5/22/14.
Docket Numbers: ER14–1833–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: 2014–05–01_SA 1756 METC-Consumers (G479B) to be effective 5/2/2014..
Filed Date: 5/1/14.
Accession Number: 20140501–5143.
Comments Due: 5 p.m. ET 5/22/14.
Docket Numbers: ER14–1834–000.
Applicants: New England Power Pool Participants Committee.
Description: May 2014 Membership Filing to be effective 5/1/2014.

Filed Date: 5/1/14.
Accession Number: 20140501–5146.
Comments Due: 5 p.m. ET 5/22/14.
Docket Numbers: ER14–1835–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): 2014–05–01 BOD Expansion to be effective 7/1/2014.
Filed Date: 5/1/14.
Accession Number: 20140501–5239.
Comments Due: 5 p.m. ET 5/22/14.
Docket Numbers: ER14–1836–000.
Applicants: Southwestern Public Service Company.
Description: Southwestern Public Service Company submits tariff filing per 35.15: 5–1–14_RS139_141_143 NOCs to be effective 3/1/2014.
Filed Date: 5/1/14.
Accession Number: 20140501–5249.
Comments Due: 5 p.m. ET 5/22/14.
Docket Numbers: ER14–1837–000.
Applicants: Southwestern Public Service Company.
Description: Southwestern Public Service Company submits tariff filing per 35.15: 5–1–14_RS145 NOT Filing to be effective 3/1/2014.
Filed Date: 5/1/14.
Accession Number: 20140501–5250.
Comments Due: 5 p.m. ET 5/22/14.
Docket Numbers: ER14–1838–000.
Applicants: 511 Plaza Energy, LLC.
Description: 511 Plaza Energy, LLC submits tariff filing per 35.15: Cancellation of MBR Tariff to be effective 5/1/2014.
Filed Date: 5/1/14.
Accession Number: 20140501–5276.
Comments Due: 5 p.m. ET 5/22/14.
Docket Numbers: ER14–1839–000.
Applicants: Sargent Canyon Cogeneration Company.
Description: Sargent Canyon Cogeneration Company submits tariff filing per 35.13(a)(2)(iii): Revisions to market-based rate tariff to be effective 5/1/2014.
Filed Date: 5/1/14.
Accession Number: 20140501–5277.
Comments Due: 5 p.m. ET 5/22/14.
Docket Numbers: ER14–1840–000.
Applicants: Coalinga Cogeneration Company.
Description: Coalinga Cogeneration Company submits tariff filing per 35.13(a)(2)(iii): Change in status and revisions to MBR tariff to be effective 5/1/2014.
Filed Date: 5/1/14.
Accession Number: 20140501–5279.
Comments Due: 5 p.m. ET 5/22/14.
Docket Numbers: ER14–1841–000.
Applicants: Kern River Cogeneration Company.
Description: Kern River Cogeneration Company submits tariff filing per 35.13(a)(2)(iii): Change in status and revisions to MBR tariff to be effective 5/1/2014.
Filed Date: 5/1/14.
Accession Number: 20140501–5282.
Comments Due: 5 p.m. ET 5/22/14.
Docket Numbers: ER14–1842–000.
Applicants: Mid-Set Cogeneration Company.
Description: Mid-Set Cogeneration Company submits tariff filing per 35.13(a)(2)(iii): Change in status and revisions to MBR tariff to be effective 5/1/2014.
Filed Date: 5/1/14.
Accession Number: 20140501–5285.
Comments Due: 5 p.m. ET 5/22/14.
Docket Numbers: ER14–1843–000.
Applicants: Salinas River Cogeneration Company.
Description: Salinas River Cogeneration Company submits tariff filing per 35.13(a)(2)(iii): Change in status and revisions to MBR tariff to be effective 5/1/2014.
Filed Date: 5/1/14.
Accession Number: 20140501–5287.
Comments Due: 5 p.m. ET 5/22/14.
Docket Numbers: ER14–1844–000.
Applicants: Sycamore Cogeneration Company.
Description: Sycamore Cogeneration Company submits tariff filing per 35.13(a)(2)(iii): Change in status and revisions to MBR tariff to be effective 5/1/2014.
Filed Date: 5/1/14.
Accession Number: 20140501–5293.
Comments Due: 5 p.m. ET 5/22/14.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES14–40–000.
Applicants: Potomac Electric Power Company, Delmarva Power & Light Company, PHI Service Company.
Description: Joint Application to Issue Securities of PHI Service Company on behalf of Delmarva Power & Light Company and Potomac Electric Power Company.
Filed Date: 4/30/14.
Accession Number: 20140430–5618.
Comments Due: 5 p.m. ET 5/21/14.

Take notice that the Commission received the following land acquisition reports:

Docket Numbers: LA14–1–000.
Applicants: E.ON Global Commodities North America LLC, EC&R O&M, LLC, Munnsville Wind Farm, LLC, Pioneer Trail Wind Farm, LLC, Settlers Trail Wind Farm, LLC, Stony Creek Wind Farm, LLC, Wildcat Wind Farm I, LLC.
Description: Quarterly Land Acquisition Report of the E.ON CRNA Sellers under LA14–1.
Filed Date: 4/30/14.
Accession Number: 20140430–5611.
Comments Due: 5 p.m. ET 5/21/14.
Docket Numbers: LA14–1–000.
Applicants: Ashtabula Wind, LLC, Ashtabula Wind II, LLC, Ashtabula Wind III, LLC, Backbone Mountain Windpower LLC, Badger Windpower, LLC, Baldwin Wind, LLC, Bayswater Peaking Facility, LLC, Blackwell Wind, LLC, Butler Ridge Wind Energy Center, LLC, Cimarron Wind Energy, LLC, Crystal Lake Wind, LLC, Crystal Lake Wind II, LLC, Crystal Lake Wind III, LLC, Day County Wind, LLC, Diablo Winds, LLC, Desert Sunlight 250, LLC, Desert Sunlight 300, LLC, Elk City Wind, LLC, Elk City II Wind, LLC, Energy Storage Holdings, LLC, Ensign Wind, LLC, ESI Vansycle Partners, L.P., Florida Power & Light Co., FPL Energy Burleigh County Wind, LLC, FPL Energy Cabazon Wind, LLC, FPL Energy Cape, LLC, FPL Energy Cowboy Wind, LLC, FPL Energy Green Power Wind, LLC, FPL Energy Hancock County Wind, LLC, FPL Energy Illinois Wind, LLC, FPL Energy Marcus Hook, L.P., FPL Energy MH50 L.P., FPL Energy Montezuma Wind, LLC, FPL Energy Mower County, LLC, FPL Energy New Mexico Wind, LLC, FPL Energy North Dakota Wind, LLC, FPL Energy North Dakota Wind II, LLC, FPL Energy Oklahoma Wind, LLC, FPL Energy Oliver Wind I, LLC, FPL Energy Oliver Wind II, LLC, FPL Energy Sooner Wind, LLC, FPL Energy South Dakota Wind, LLC, FPL Energy Stateline II, Inc., FPL Energy Vansycle, LLC, FPL Energy Wyman, LLC, FPL Energy Wyman IV, LLC, Garden Wind, LLC, Genesis Solar, LLC, Gray County Wind Energy, LLC, Hatch Solar Energy Center I, LLC, Hawkeye Power Partners, LLC, High Majestic Wind Energy Center, LLC, High Winds, LLC, High Majestic Wind II, LLC, Jamaica Bay Peaking Facility, LLC, Lake Benton Power Partners II, LLC, Langdon Wind, LLC, Limon Wind, LLC, Limon Wind II, LLC, Logan Wind Energy LLC, Mantua Creek Solar, LLC, Meyersdale Windpower LLC, Mill Run Windpower, LLC, Minco Wind, LLC, Minco Wind II, LLC, Minco Wind III, LLC, Minco Wind Interconnection Services, LLC, Mountain View Solar, LLC, NEPM II, LLC, NextEra Energy Duane Arnold, LLC, NextEra Energy Montezuma II Wind, LLC, NextEra Energy Power Marketing, LLC, NextEra Energy Point Beach, LLC, NextEra Energy Seabrook, LLC, NextEra Energy Services Massachusetts, LLC, Northeast Energy Associates, A Limited

Partnership, North Jersey Energy Associates, A Limited Partnership, North Sky River Energy, LLC, Northern Colorado Wind Energy, LLC, Osceola Windpower, LLC, Osceola Windpower II, LLC, Paradise Solar Urban Renewal, L.L.C., Peetz Table Wind Energy, LLC, Pennsylvania Windfarms, Inc., Perrin Ranch Wind, LLC, Pheasant Run Wind, LLC, Pheasant Run Wind II, LLC, Red Mesa Wind, LLC, Sky River LLC, Somerset Windpower, LLC, Steele Flats Wind Project, LLC, Story Wind, LLC, Tuscola Bay Wind, LLC, Tuscola Wind II, LLC, Vasco Winds, LLC, Waymart Wind Farm, L.P., Wessington Wind Energy Center, LLC, White Oak Energy LLC, Wilton Wind II, LLC, Windpower Partners 1993, L.P.

Description: Quarterly Land Acquisition Report of the NextEra Energy Companies.

Filed Date: 4/30/14.

Accession Number: 20140430–5612.

Comments Due: 5 p.m. ET 5/21/14.

Docket Numbers: LA14–1–000.

Applicants: All Dams Generation, LLC, Arlington. Valley Solar Energy II, LLC, Bluegrass Generation Company, L.L.C., Calhoun Power Company, LLC, Centinela Solar Energy, LLC, Cherokee County Cogeneration Partners, LLC, DeSoto County Generating Company, LLC, Doswell Limited Partnership, Lake Lynn Generation, LLC, Las Vegas Power Company, LLC, LS Power Marketing, LLC, LSP University Park, LLC, PE Hydro Generation, LLC, Renaissance Power, L.L.C., Riverside Generating Company, L.L.C., Rocky Road Power, LLC, Seneca Generation, LLC, Tilton Energy LLC, University Park Energy, LLC, Wallingford Energy LLC, West Deptford Energy, LLC.

Description: Quarterly Land Acquisition Report of the LS MBR Sellers.

Filed Date: 4/30/14.

Accession Number: 20140430–5613.

Comments Due: 5 p.m. ET 5/21/14.

Docket Numbers: LA14–1–000.

Applicants: Beebe Renewable Energy, LLC, Exelon Generation Company, LLC, Harvest Windfarm, LLC, Harvest II Windfarm, LLC, Michigan Wind 1, LLC, Michigan Wind 2, LLC, Constellation Mystic Power, LLC, Exelon Framingham LLC, Exelon New Boston, LLC, Exelon West Medway LLC, Exelon Wyman, LLC, Nine Mile Point Nuclear Station, LLC, R.E. Ginna Nuclear Power Plant, LLC, Calvert Cliffs Nuclear Power Plant, LLC, Constellation Power Source Generation, LLC, Criterion Power Partners, LLC, Handsome Lake Energy, LLC, Safe Harbor Water Power Corporation, Cassia Gulch Wind Park LLC, High Mesa Energy, LLC, Tuana Springs Energy, LLC, CER Generation II, LLC, Cow Branch Wind Power, L.L.C., CR Clearing, LLC, Wind Capital Holdings, LLC, CER Generation, LLC, AV Solar Ranch 1, LLC, Exelon Wind 4, LLC,Wildcat Wind, LLC, Shooting Star Wind Project, LLC, Baltimore Gas and Electric Company, Commonwealth Edison Company, Constellation Energy Commodities Group Maine, LLC, Constellation NewEnergy, Inc., PECO Energy Company.

Description: Quarterly Land Acquisition Report of the Exelon MBR entities.

Filed Date: 4/30/14.

Accession Number: 20140430–5614.

Comments Due: 5 p.m. ET 5/21/14.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 1, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–10584 Filed 5–7–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL14–43–000]

East Texas Electric Cooperative, Inc.; Sam Rayburn Electric Cooperative, Inc.; Tex-La Electric Cooperative of Texas, Inc. v. Entergy Texas, Inc.: Notice of Complaint

Take notice that on April 30, 2014, pursuant to Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206 and sections 206 and 306 of the Federal Power Act, 16 USC 824(e) and 825(e), East Texas Electric Cooperative, Inc., Sam Rayburn Electric Cooperative, Inc., and Tex-La Electric Cooperative of Texas, Inc. (collectively, ETEC or Complainant) filed a formal complaint against Entergy Texas, Inc. (Entergy Texas or Respondent) alleging that Entergy Texas is violating the Second Amended and Restated Agreement for Partial Requirements Wholesale Service between ETEC and Entergy Texas, by calculating ETEC's share of Entergy Texas' 2013 rough production cost estimate payments in a manner inconsistent with the Agreement. ETEC request that the Commission order Entergy Texas to determine ETEC's share of the 2013 bandwidth payments consistent with the Agreement and with Entergy Texas' past practice.

The Complainant certifies that copies of the complaint were served on the Respondent as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on May 20, 2014.

Dated: May 2, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–10585 Filed 5–7–14; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[Petitions IV–2012–1 Through 5; FRL–9910–57–Region 4]

Clean Air Act Operating Permit Program; Petitions for Objection to State Operating Permit Renewals for Georgia Power/Southern Company

AGENCY: Environmental Protection Agency.

ACTION: Notice of final order on petitions to object to a state operating permit.

SUMMARY: The Environmental Protection Agency (EPA) Administrator signed an Order, dated April 14, 2014, partially granting and partially denying petitions to object to Clean Air Act (CAA) title V operating permit renewals issued by the Georgia Environmental Protection Division to Georgia Power Company for the following steam-electric generation stations: Hammond located near Coosa in Floyd County, Georgia; Kraft located near Port Wentworth in Chatham County, Georgia; McIntosh located near Rincon in Effingham County, Georgia; Scherer located near Juliette in Monroe County, Georgia; and Wansley located near Carrollton in Heard County, Georgia. This Order constitutes a final action on the petitions submitted by GreenLaw on behalf of Sierra Club and other environmental groups (Petitioners) and received by EPA on June 13 and 15, September 5, October 23 and November 13, 2012, respectively.

ADDRESSES: Copies of the Order, the petitions, and all pertinent information relating thereto are on file at the following location: EPA Region 4; Air, Pesticides and Toxics Management Division; 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. The Order is also available electronically at the following address: *http://www.epa.gov/region07/air/title5/petitiondb/petitions/ga_power_plants_response2012.pdf.*

FOR FURTHER INFORMATION CONTACT: Art Hofmeister, Air Permits Section, EPA Region 4, at (404) 562–9115 or *hofmeister.art@epa.gov*.

SUPPLEMENTARY INFORMATION: The CAA affords EPA a 45-day period to review and, as appropriate, the authority to object to operating permits proposed by state permitting authorities under title V of the CAA, 42 U.S.C. 7661–7661f. Section 505(b)(2) of the CAA and 40 CFR 70.8(d) authorize any person to petition the EPA Administrator to object to a title V operating permit within 60 days after the expiration of EPA's 45-day review period if EPA has not objected on its own initiative. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the state, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period. Pursuant to sections 307(b) and 505(b)(2) of the CAA, a petition for judicial review of those parts of the Order that deny issues in the petition may be filed in the United States Court of Appeals for the appropriate circuit within 60 days from the date this notice is published in the **Federal Register**.

Petitioners submitted petitions regarding the aforementioned Georgia Power facilities, requesting that EPA object to the CAA title V operating permit renewals (#4911–115–0003–V–03–0, 4911–051–0006–V–03–0, 4911–103–0003–V–03–0, 4911–207–0008–V–03–0, and 4911–149–0001–V–03–0, respectively). Petitioners alleged that the permit renewals were not consistent with the CAA because they: (1) Lack sufficiently detailed information regarding the facilities' compliance obligations related to hazardous air pollutant emissions under the National Emissions Standards for Hazardous Air Pollutants for electric utility steam generating units; (2) fail to assure compliance with the sulfur dioxide (SO_2) emissions limit in Georgia's rules due to a permit provision authorizing facilities not to operate their SO_2 continuous emission monitoring systems during startup, shutdown, malfunction and other periods; (3) lack sufficient monitoring requirements to assure compliance with applicable particulate matter limits; (4) contain vague and unenforceable fugitive dust control requirements; and (5) fail to apply preconstruction requirements under the CAA's Prevention of Significant Deterioration and Nonattainment New Source Review programs to recent and planned upgrades to Scherer's steam turbines.

On April 14, 2014, the Administrator issued an Order partially granting and partially denying the petitions. The Order explains EPA's rationale for partially granting and partially denying the petitions.

Dated: May 1, 2014.

A. Stanley Meiburg

Acting Regional Administrator, Region 4.

[FR Doc. 2014–10589 Filed 5–7–14; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 011961–015.

Title: The Maritime Credit Agreement.

Parties: Alianca Navegacao e Logistica Ltda. & Cia.; A.P. Moller-Maersk A/S trading under the name of Maersk Line; China Shipping Container Lines Co., Ltd.; CMA CGM S.A.; Companhia Libra de Navegacao; Compania Libra de Navegacion Uruguay S.A.; Compania Sud Americana de Vapores, S.A.; COSCO Container Lines Company Limited; Dole Ocean Cargo Express; Hamburg-Süd; Hanjin Shipping Co., Ltd.; Independent Container Line Ltd.; Kawasaki Kisen Kaisha, Ltd.; Nippon Yusen Kaisha; Norasia Container Lines Limited; United Arab Shipping Company (S.A.G.); Wallenius Wilhelmsen Logistics AS; Zim Integrated Shipping Services, Ltd.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor; 1627 I Street NW., Suite 1100; Washington, DC 20006.

Synopsis: The amendment removes Hyundai Merchant Marine Co., Ltd. as a party to the Agreement.

Agreement No.: 012037–006.

Title: Maersk Line/CMA CGM Transatlantic Slot Exchange Agreement.

Parties: A.P. Moeller-Maersk A/S trading under the name of Maersk Line; and CMA CGM S.A.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor; 1627 I Street NW., Suite 1100; Washington, DC 20006–4007.

Synopsis: The amendment converts the agreement from a space charter agreement to a slot exchange agreement and makes changes necessary to reflect the bi-lateral nature of the exchange. The amendment also adds the U.S. Gulf Coast to and deletes Panama from the geographic scope of the agreement.

Finally, the amendment adds an expiration date to the agreement and restates the agreement.

Agreement No.: 012193–001.

Title: Siem Car Carriers AS/Compania Sud Americana de Vapores S.A. Space Charter Agreement.

Parties: Siem Car Carriers AS and Compania Sud Americana de Vapores S.A.

Filing Party: Ashley W. Craig Esq.; Venable LLP; 575 Seventh Street NW., Washington, DC 20004.

Synopsis: The agreement revises the name of Siem Car Carriers Pacific AS to Siem Car Carriers AS.

Agreement No.: 012269.

Title: APL/HMM Temporary Slot Equipment Repositioning Agreement.

Parties: American Presidents Lines, Ltd. and Hyundai Merchant Marine Co. Ltd.

Filing Party: Eric. C. Jeffrey, Esq. and Lindsey M. Nelson; Nixon Peabody LLP; 401 9th Street NW., Suite 900; Washington, DC 20004.

Synopsis: The agreement authorizes APL to charter space to HMM for the repositioning of empty containers on an ''as needed/as available'' basis in the trade between Southern California and Mexico.

Agreement No.: 012270.

Title: APL/HMM/MOL USEC/Latin America Vessel Sharing Agreement.

Parties: American Presidents Lines, Ltd.; Hyundai Merchant Marine Co. Ltd.; and Mitsui O.S.K. Lines, Ltd.

Filing Party: Eric. C. Jeffrey, Esq. and Lindsey M. Nelson; Nixon Peabody LLP; 401 9th Street NW., Suite 900; Washington, DC 20004.

Synopsis: The agreement authorizes APL, HMM, and MOL to operate a joint string between the U.S. East Coast, on the one hand, and Chile, Peru, Colombia, and Panama, on the other hand.

Agreement No.: 012271.

Title: MSC/CMA CGM North West European Continent—US East Coast Service Space Charter Agreement.

Parties: MSC Mediterranean Shipping Company S.A. and CMA CGM S.A.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor; 1627 I Street NW., Suite 1100; Washington, DC 20006.

Synopsis: The agreement would authorize MSC to charter space to CMA in the trade between the North European Continent and the U.S. East Coast. The parties have requested expedited review.

Agreement No.: 012272.

Title: MSC/Zim Amazon Service Vessel Sharing Agreement.

Parties: MSC Mediterranean Shipping Company S.A. and Zim Integrated Shipping Services, Ltd.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor; 1627 I Street NW., Suite 1100; Washington, DC 20006.

Synopsis: The agreement would authorize the parties to share vessels in the trade between the U.S. East and Gulf Coasts, on the one hand, and Mexico, Panama, Jamaica, the Republic of Trinidad and Tobago, and Brazil, on the other hand.

Agreement No.: 012273.

Title: MSC/CMA CGM USEC–WCSA Space Charter Agreement.

Parties: MSC Mediterranean Shipping Company S.A. and CMA CGM S.A.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor; 1627 I Street NW., Suite 1100; Washington, DC 20006.

Synopsis: The agreement authorizes MSC to charter space to CMA in the trade between the U.S. East Coast, on the one hand, and Panama, Colombia (Pacific Coast only), Ecuador, Peru, and Chile.

Dated: May 2, 2014.

By Order of the Federal Maritime Commission.

Karen V. Gregory,

Secretary.

[FR Doc. 2014–10493 Filed 5–7–14; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 14–04]

EDAF Antillas, Inc. v. Crowley Caribbean Logistics, LLC, IFS International Forwarding, S.L., and IFS Neutral Maritime Services; Notice of Filing of Complaint and Assignment

Notice is given that a complaint has been filed with the Federal Maritime Commission (Commission) by Edaf Antillas, Inc., hereinafter ''Complainant,'' against Crowley Caribbean Logistics, LLC (''CCL''), IFS International Forwarding, S.L. (''IFS'') and IFS Neutral Maritime Services (''Neutral''), hereinafter ''Respondents.'' Complainant states that it is a shipper engaged in the distribution and marketing of Spanish language books. Complainant alleges that: Respondent CCL is an ocean common carrier; Respondents IFS and Neutral are Limited Liability Corporations organized under the laws of the Kingdom of Spain and non-vessel-operating common carriers and freight forwarders under the Shipping Act of 1984 (''the Act'').

Complainant alleges that Respondents violated section 10(d)(1) of the Act, 46 U.S.C. 41102(c) ''by failing to have reasonable regulations or practices in place that, if followed, would have prevented the loading of a non-compliant wood pallet or crate into a container bound for the United States''; ''when they failed to establish, observe, and enforce just and reasonable regulations and practices to ensure that the container rejected for entry in to the United States, was cured for reentry in a timely and efficient manner''; and ''by not having reasonable regulations or practices regarding how expenses incurred in the re-exportation and re-importation of non-compliant cargos would be resolved between these regulated parties.'' Further Complainant alleges that Respondents violated section 10(b)(8) of the Act ''when they required and demanded payment for expenses that would be incurred in curing the defective cargo from one or more of the Respondents and/or the shipper or consignee of the offending cargo.'' Further Complainant alleges that Respondent CCL ''resorted to unfair or unjustly discriminatory methods'' in violation of section 10(b)(3) of the Act, 46 U.S.C. 41104(3). Finally, Complainant alleges that Respondent CCL violated section 10(d)(1) of the Act in its failure to notify Complainant's Customs Broker of the required filing.

Complainant requests that the Commission issue the following relief: ''that the Commission direct the Respondents to pay reparations in the amount of $158,000.00 for actual injury suffered by the Complainant and any additional amounts the Commission determines should proceed for Respondents' violation of 46 U.S.C. 41104(3), including reasonable attorney's fees and costs.''

The full text of the complaint can be found in the Commission's Electronic Reading Room at *www.fmc.gov/14–04.*

This proceeding has been assigned to the Office of Administrative Law Judges. The initial decision of the presiding officer in this proceeding shall be issued by May 4, 2015 and the final decision of the Commission shall be issued by November 2, 2015.

Karen V. Gregory,

Secretary.

[FR Doc. 2014–10527 Filed 5–7–14; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part

225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 2, 2014.

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street Richmond, Virginia 23261–4528:

1. *National Consumer Cooperative Bank and NCB Financial Corporation,* both in Washington, DC; to become bank holding companies through the conversion of their wholly-owned subsidiary, NCB, FSB, Hillsboro, Ohio, to a national bank under the title of National Cooperative Bank, N.A.

Board of Governors of the Federal Reserve System, May 5, 2014.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2014–10577 Filed 5–7–14; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection: Comment Request

AGENCY: Federal Trade Commission (''Commission'' or ''FTC'').

ACTION: Notice; Request for public comment.

SUMMARY: The FTC plans to conduct a consumer study to examine fuel economy advertising. The study is part of the Commission's regulatory review of the Guide Concerning Fuel Economy Advertising for New Automobiles (''Fuel Economy Guide'' or ''Guide''). This is the first of two notices required under the Paperwork Reduction Act (''PRA'') in which the FTC seeks public comments on its proposed consumer research before requesting Office of Management and Budget (''OMB'') review of, and clearance for, the collection of information discussed herein.

DATES: Comments must be received on or before July 7, 2014.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Fuel Economy Consumer Study, Project No. P134202'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/fueleconomystudypra*, by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610, (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610, (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, 202–326–2889, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Room M–8102B, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission issued the Guide Concerning Fuel Economy Advertising for New Automobiles (''Fuel Economy Guide'' or ''Guide'') (16 CFR Part 259) in 1975 to prevent deceptive fuel economy advertising and to facilitate the use of fuel economy information in advertising. The Guide helps advertisers avoid unfair or deceptive claims under Section 5 of the FTC Act.[1] To accomplish this goal, the Guide advises marketers to disclose established Environmental Protection Agency (EPA) fuel economy estimates (*e.g.,* miles per gallon or ''mpg'') whenever they make any fuel economy claim based on those estimates. In addition, if advertisers make fuel economy claims based on non-EPA tests, the Guide directs them to disclose also EPA-derived fuel economy estimates and provide details about the non-EPA tests such as the source of the test, driving conditions, and vehicle configurations.

On April 28, 2009 (74 FR 19148), the Commission published a Notice of Proposed Rulemaking (''NPRM'') soliciting comments on proposed amendments to the Guide. The Commission then postponed its review of the Guide in a June 1, 2011 Notice (76 FR 31467) pending new fuel economy labeling requirements from the EPA and completion of the FTC's review of its Alternative Fuels Rule (16 CFR Part 309). The Commission explained that issuance of a final Fuel Economy Guide would be premature before the conclusion of these regulatory proceedings. With those proceedings completed,[2] the Commission now resumes its review of the Fuel Economy Guide.

II. FTC's Proposed Study

A. Study Description

The FTC plans to conduct Internet-based consumer research to explore consumer perceptions of certain fuel economy claims to enhance the Commission's knowledge of how consumers understand such claims. Specifically, using a treatment-effect methodology, the proposed study will compare participant responses regarding their understanding of a variety of claim types, such as general fuel economy claims (*e.g.,* ''this car gets great gas mileage''), specific MPG claims (*e.g.,* ''39 mpg''), and driving range claims. To aid in developing possible changes to the Fuel Economy Guide, FTC staff will consider the consumer research results in conjunction with the broad range of issues raised by commenters during the Guide review.

[1] 15 U.S.C. 45(a). The Commission's industry guides, such as the Fuel Economy Guide, are administrative interpretations of the application of Section 5 of the FTC Act, 15 U.S.C. 45(a) to advertising claims. The Commission issues industry guides to provide guidance for the public to conform with legal requirements. These guides provide the basis for voluntary abandonment of unlawful practices by industry members. 16 CFR part 17. The Guides do not have the force and effect of law and are not independently enforceable. However, failure to follow industry guides may result in enforcement action under Section 5 of the FTC Act. The Commission, therefore, can take action under the FTC Act if a business makes fuel economy marketing claims inconsistent with the Guides. In any such enforcement action, the Commission must prove that the act or practice at issue is unfair or deceptive.

[2] The Commission announced final revisions to the Alternative Fuels Rule in an April 23, 2013 Notice (78 FR 23832). In 2011, EPA completed revisions to its fuel economy labeling requirements, which, among other things, addressed labels for alternative fueled vehicles (AFVs) not specifically addressed in past EPA requirements. *See* 76 FR 39478 (July 6, 2011).

Having considered the costs and benefits of various data collection methods, FTC staff has concluded that an Internet panel with nationwide coverage will provide the most efficient way to collect data to meet the research objectives within a feasible budget. Thus, the FTC proposes to collect responses from U.S. automobile consumers representing a broad spectrum of the U.S. adult population. Participants will be drawn from an Internet panel maintained by a commercial firm that operates the panel. All participation will be voluntary. While the results will not be generalizable to the U.S. population, the Commission believes that they will provide useful insights into consumer understanding of the claims being considered.

B. PRA Burden Analysis

Staff estimates that respondents to the Internet questionnaire will require, on average, approximately 20 minutes to complete it. Staff will pretest the questionnaire with approximately 100 respondents to ensure that all questions are easily understood. Allowing for an extra three minutes for questions unique to the pretest, the pretest will total approximately 38 hours cumulatively (100 respondents × 23 minutes each). Once the pretest is completed, the FTC plans to seek information from up to 3,600 respondents for approximately 20 minutes each. Thus, cumulatively, for all respondents, responding to the FTC's pretest and questionnaire will consume approximately 1,238 hours. The cost per respondent should be negligible. Participation will not require start up, capital, or labor expenditures by respondents.

III. Request for Comment

Under the PRA, 44 U.S.C. 3501–3521, federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. ''Collection of information'' means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing paperwork clearance for the regulations noted herein.

Pursuant to Section 3506(c)(2)(A) of the PRA, the FTC invites comments on: (1) Whether the reporting requirements are necessary, including whether the information will be practically useful; (2) the accuracy of our burden estimates, including whether the methodology and assumptions used are valid; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before July 7, 2014. Write ''Fuel Economy Consumer Study, Project No. P134202'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which is . . . privileged or confidential,'' as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[3] Your comment will be kept confidential only if the FTC General Counsel grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/fueleconomystudypra*, by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Fuel Economy Consumer Study, Project No. P134202'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610, (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610, (Annex J), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or July 7, 2014. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2014–10518 Filed 5–7–14; 8:45 am]

BILLING CODE 6750–01–P

[3] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0089; Docket No. 2014–0055; Sequence 7]

Information Collection; Request for Authorization of Additional Classification and Rate, Standard Form 1444

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning Request for Authorization of Additional Classification and Rate, Standard Form (SF) 1444.

DATES: Comments may be submitted on or before July 7, 2014.

ADDRESSES: Submit comments identified by Information Collection 9000–0089 by any of the following methods:

• Regulations.gov: *http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number 9000–0089. Select the link ''Comment Now'' that corresponds with ''Information Collection 9000–0089, Request for Authorization of Additional Classification and Rate, SF 1444.'' Follow the instructions provided on the screen. Please include your name, company name (if any), and ''Information Collection 9000–0089, Request for Authorization of Additional Classification and Rate, SF 1444'' on your attached document.

• Mail: General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/IC 9000–0089.

Instructions: Please submit comments only and cite Information Collection 9000–0089, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb, Procurement Analyst, Federal Acquisition Policy Division, GSA, 202–501–0650 or email *edward.loeb@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

Federal Acquisition Regulation (FAR) 22.406 prescribes labor standards for federally financed and assisted construction contracts subject to the Davis-Bacon and Related Acts (DBRA), as well as labor standards for non-construction contracts subject to the Contract Work Hours and Safety Standards Act (CWHSSA).

The recordkeeping requirements in this regulation, FAR 22.406, reflect the requirements cleared under OMB control numbers 1215–0140, 1215–0149, and 1215–0017 for 29 CFR 5.5(a)(1)(i), 5.5(c), and 5.15 (records to be kept by employers under the Fair Labor Standards Act (FLSA)). The regulation at 29 CFR 516 reflects the basic recordkeeping and reporting requirements for the laws administered by the Wage and Hour Division of the Employment Standards Administration.

FAR 22.406–3, implements the recordkeeping and information collection requirements prescribed in 29 CFR 5.5(a)(1)(ii) cleared under OMB control number 1215–0140 (also prescribed at 48 CFR 22.406 under OMB control number 9000–0089), by providing SF 1444, Request for Authorization of Additional Classification and Rate, for the contractor and the Government to enter the recordkeeping and information collection data required by 29 CFR 5.5(a)(1)(ii) prior to transmitting the data to the Department of Labor.

This SF 1444 places no further burden on the contractor or the Government other than the information collection burdens already cleared by OMB for 29 CFR 5.

B. Annual Reporting Burden

There is no burden placed on the public beyond that prescribed by the Department of Labor regulations.

Number of Respondents: 4493.
Responses per Respondent: 2.
Total Annual Responses: 8986.
Review time per response: .5.
Total Burden Hours: 4493.

The burden hour is estimated to be time necessary for the contractor to prepare and submit the form.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Obtaining Copies of Proposals: Requester may obtain a copy of the justification from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 9000–0089, Request for Authorization of Additional Classification and Rate, Standard Form 1444, in all correspondence.

Dated: May 5, 2014.

Karlos Morgan,

Acting Director, Federal Acquisition Policy Division, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2014–10633 Filed 5–7–14; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Meeting of the Community Preventive Services Task Force (Task Force)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: The Centers for Disease Control and Prevention (CDC) announces the next meeting of the Community Preventive Services Task Force (Task Force). The Task Force is an independent, nonpartisan, nonfederal, and unpaid panel. Its members represent a broad range of research, practice, and policy expertise in prevention, wellness, health promotion, and public health, and are appointed by the CDC Director. The Task Force was convened in 1996 by the Department of Health and Human Services (HHS) to identify community preventive programs, services, and policies that increase healthy longevity, save lives and dollars and improve Americans' quality of life. CDC is mandated to provide ongoing administrative, research, and technical support for the operations of the Task Force. During its meetings, the Task Force considers the findings of systematic reviews on existing research, and issues recommendations. Task Force recommendations are not mandates for compliance or spending. Instead, they provide information about evidence-based options that decision makers and stakeholders can consider when determining what best meets the specific needs, preferences, available resources, and constraints of their jurisdictions and constituents. The Task Force's recommendations, along with the systematic reviews of the scientific evidence on which they are based, are compiled in the *Guide to Community Preventive Services (Community Guide).*

DATES: The meeting will be held on Wednesday, June 18, 2014 from 8:30 a.m. to 6:00 p.m. EDT and Thursday, June 19, 2014 from 8:30 a.m. to 1:00 p.m. EDT.

ADDRESSES: The Task Force Meeting will be held at CDC Edward R. Roybal Campus, Tom Harkin Global Communications Center (Building 19), 1600 Clifton Road NE., Atlanta, GA 30333. You should be aware that the meeting location is in a Federal government building; therefore, Federal security measures are applicable. For additional information, please see *Roybal Campus Security Guidelines* under **SUPPLEMENTARY INFORMATION.** Information regarding meeting logistics will be available on the Community Guide Web site (*www.thecommunityguide.org*).

Meeting Accessability: This meeting is open to the public, limited only by space availability. All meeting attendees must RSVP to ensure the required security procedures are completed to gain access to the CDC's Global Communications Center.

U.S. citizens must RSVP by 6/4/2014.

Non U.S. citizens must RSVP by 5/23/2014 due to additional security steps that must be completed.

Failure to RSVP by the dates identified could result in an inability to attend the Task Force meeting due to the strict security regulations on federal facilities.

For Further Information and To RSVP Contact: Andrea Baeder, The Community Guide Branch; Division of Epidemiology, Analysis, and Library Services; Center for Surveillance, Epidemiology and Laboratory Services; Office of Public Health Scientific Services; Centers for Disease Control and Prevention, 1600 Clifton Road, MS–E–69, Atlanta, GA 30333, phone: (404) 498–6876, email: *CPSTF@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: The purpose of the meeting is for the Task Force to consider the findings of systematic reviews and issue findings and recommendations. Task Force recommendations provide information about evidence-based options that decision makers and stakeholders can consider when determining what best meets the specific needs, preferences, available resources, and constraints of their jurisdictions and constituents.

Matters to be discussed: diabetes prevention and control, obesity prevention and control, reducing tobacco use and secondhand smoke exposure, promoting health equity, and promoting physical activity.

Roybal Campus Security Guidelines: The Edward R. Roybal Campus is the headquarters of the U.S. Centers for Disease Control and Prevention and is located at 1600 Clifton Road NE., Atlanta, Georgia. The meeting is being held in a Federal government building; therefore, Federal security measures are applicable.

All meeting attendees must RSVP by the dates outlined under *Meeting Accessability.* In planning your arrival time, please take into account the need to park and clear security. All visitors must enter the Roybal Campus through the entrance on Clifton Road. Your car may be searched, and the guard force will then direct visitors to the designated parking area. Upon arrival at the facility, visitors must present government issued photo identification (e.g., a valid federal identification badge, state driver's license, state non-driver's identification card, or passport). Non-United States citizens must complete the required security paperwork prior to the meeting date and must present a valid passport, visa, Permanent Resident Card, or other type of work authorization document upon arrival at the facility. All persons entering the building must pass through a metal detector. Visitors will be issued a visitor's ID badge at the entrance to Building 19 and may be escorted to the meeting room. All items brought to HHS/CDC are subject to inspection.

Dated: May 5, 2014.

Ron A. Otten,

Acting Deputy Associate Director for Science, Centers for Disease Control and Prevention.

[FR Doc. 2014–10560 Filed 5–7–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1619–NC]

Medicare and Medicaid Programs; Announcement of Application From a Hospital Requesting Waiver for Organ Procurement Service Area

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice with comment period.

SUMMARY: A hospital has requested a waiver of statutory requirements that would otherwise require the hospital to enter into an agreement with its designated Organ Procurement Organization (OPO). The request was made in accordance with section 1138(a)(2) of the Social Security Act (the Act). This notice requests comments from OPOs and the general public for our consideration in determining whether we should grant the requested waiver.

DATES: *Comment Date:* To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on July 7, 2014.

ADDRESSES: In commenting, refer to file code CMS–1619–NC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1619–NC, P.O. Box 8010, Baltimore, MD 21244–1850.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1619–NC, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written comments to a regulations staff member ONLY to the following addresses:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, call

telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

Comments erroneously mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Patricia Taft, (410) 786–4561.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Background

Organ Procurement Organizations (OPOs) are not-for-profit organizations that are responsible for the procurement, preservation, and transport of organs to transplant centers throughout the country. Qualified OPOs are designated by the Centers for Medicare & Medicaid Services (CMS) to recover or procure organs in CMS-defined exclusive geographic service areas, pursuant to section 371(b)(1) of the Public Health Service Act (42 U.S.C. 273(b)(1)) and our regulations at 42 CFR 486.306. Once an OPO has been designated for an area, hospitals in that area that participate in Medicare and Medicaid are required to work with that OPO in providing organs for transplant, pursuant to section 1138(a)(1)(C) of the Social Security Act (the Act) and our regulations at 42 CFR 482.45.

Section 1138(a)(1)(A)(iii) of the Act provides that a hospital must notify the designated OPO (for the service area in which it is located) of potential organ donors. Under section 1138(a)(1)(C) of the Act, every participating hospital must have an agreement only with its designated OPO to identify potential donors.

However, section 1138(a)(2)(A) of the Act provides that a hospital may obtain a waiver of the above requirements from the Secretary of the Department of Health and Human Services (the Secretary) under certain specified conditions. A waiver allows the hospital to have an agreement with an OPO other than the one initially designated by CMS, if the hospital meets certain conditions specified in section 1138(a)(2)(A) of the Act. In addition, the Secretary may review additional criteria described in section 1138(a)(2)(B) of the Act to evaluate the hospital's request for a waiver.

Section 1138(a)(2)(A) of the Act states that in granting a waiver, the Secretary must determine that the waiver—(1) is expected to increase organ donations; and (2) will ensure equitable treatment of patients referred for transplants within the service area served by the designated OPO and within the service area served by the OPO with which the hospital seeks to enter into an agreement under the waiver. In making a waiver determination, section 1138(a)(2)(B) of the Act provides that the Secretary may consider, among other factors: (1) Cost-effectiveness; (2) improvements in quality; (3) whether there has been any change in a hospital's designated OPO due to the changes made in definitions for metropolitan statistical areas; and (4) the length and continuity of a hospital's relationship with an OPO other than the hospital's designated OPO. Under section 1138(a)(2)(D) of the Act, the Secretary is required to publish a notice of any waiver application received from a hospital within 30 days of receiving the application, and to offer interested parties an opportunity to submit comments during the 60-day comment period beginning on the publication date in the **Federal Register**.

The criteria that the Secretary uses to evaluate the waiver in these cases are the same as those described above under sections 1138(a)(2)(A) and (B) of the Act and have been incorporated into the regulations at § 486.308(e) and (f).

II. Waiver Request Procedures

In October 1995, we issued a Program Memorandum (Transmittal No. A–95–11) detailing the waiver process and discussing the information hospitals must provide in requesting a waiver. We indicated that upon receipt of a waiver request, we would publish a **Federal Register** notice to solicit public comments, as required by section 1138(a)(2)(D) of the Act.

According to these requirements, we will review the comments received. During the review process, we may consult on an as-needed basis with the Health Resources and Services Administration's Division of Transplantation, the United Network for Organ Sharing, and our regional offices. If necessary, we may request additional clarifying information from the applying hospital or others. We will then make a final determination on the waiver request and notify the hospital and the designated and requested OPOs.

III. Hospital Waiver Request

As permitted by § 486.308(e), the following hospital has requested a waiver to enter into an agreement with a designated OPO other than the OPO designated for the service area in which the hospital is located:

Mount Grant General Hospital, Hawthorne, Nevada, is requesting a waiver to work with: California Transplant Donor Network, 1000 Broadway, Suite 600, Oakland, California 94607–4099.

The Hospital's Designated OPO is: Nevada Donor Network, 2061 E Sahara Ave., Las Vegas, Nevada 89104.

IV. Collection of Information Requirement

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

V. Response to Public Comments

We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble.

Dated: May 2, 2014.

Marilyn Tavenner,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2014–10624 Filed 5–7–14; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1617–NC]

Medicare and Medicaid Programs; Announcement of Application From a Hospital Requesting Waiver for Organ Procurement Service Area

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice with comment period.

SUMMARY: A hospital has requested a waiver of statutory requirements that would otherwise require the hospital to enter into an agreement with its designated Organ Procurement Organization (OPO). The request was made in accordance with section 1138(a)(2) of the Social Security Act (the Act). This notice requests comments from OPOs and the general public for our consideration in determining whether we should grant the requested waiver.

DATES: *Comment Date:* To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on July 7, 2014.

ADDRESSES: In commenting, refer to file code CMS–1617–NC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1617–NC, P.O. Box 8010, Baltimore, MD 21244–1850.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1617–NC, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written comments to a regulations staff member ONLY to the following addresses:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

Comments erroneously mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Patricia Taft, (410) 786–4561.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Background

Organ Procurement Organizations (OPOs) are not-for-profit organizations that are responsible for the procurement, preservation, and transport of organs to transplant centers throughout the country. Qualified OPOs are designated by the Centers for Medicare & Medicaid Services (CMS) to recover or procure organs in CMS-defined exclusive geographic service areas, pursuant to section 371(b)(1) of the Public Health Service Act (42 U.S.C. 273(b)(1)) and our regulations at 42 CFR 486.306. Once an OPO has been designated for an area, hospitals in that area that participate in Medicare and Medicaid are required to work with that OPO in providing organs for transplant, pursuant to section 1138(a)(1)(C) of the Social Security Act (the Act) and our regulations at 42 CFR 482.45.

Section 1138(a)(1)(A)(iii) of the Act provides that a hospital must notify the designated OPO (for the service area in which it is located) of potential organ donors. Under section 1138(a)(1)(C) of the Act, every participating hospital must have an agreement only with its designated OPO to identify potential donors.

However, section 1138(a)(2)(A) of the Act provides that a hospital may obtain a waiver of the above requirements from the Secretary of the Department of Health and Human Services (the Secretary) under certain specified conditions. A waiver allows the hospital to have an agreement with an OPO other than the one initially designated by CMS, if the hospital meets certain conditions specified in section 1138(a)(2)(A) of the Act. In addition, the Secretary may review additional criteria described in section 1138(a)(2)(B) of the Act to evaluate the hospital's request for a waiver.

Section 1138(a)(2)(A) of the Act states that in granting a waiver, the Secretary must determine that the waiver—(1) is expected to increase organ donations; and (2) will ensure equitable treatment of patients referred for transplants within the service area served by the designated OPO and within the service area served by the OPO with which the hospital seeks to enter into an agreement under the waiver. In making a waiver determination, section 1138(a)(2)(B) of the Act provides that the Secretary may consider, among other factors: (1) cost-effectiveness; (2) improvements in quality; (3) whether there has been any change in a hospital's designated OPO due to the changes made in definitions for metropolitan statistical areas; and (4) the length and continuity of a hospital's relationship with an OPO other than the hospital's designated OPO. Under section 1138(a)(2)(D) of the Act, the Secretary is required to publish a notice of any waiver application received from a hospital within 30 days of receiving the application, and to offer interested parties an opportunity to submit comments during the 60-day comment period beginning on the publication date in the **Federal Register**.

The criteria that the Secretary uses to evaluate the waiver in these cases are the same as those described above under sections 1138(a)(2)(A) and (B) of the Act and have been incorporated into the regulations at § 486.308(e) and (f).

II. Waiver Request Procedures

In October 1995, we issued a Program Memorandum (Transmittal No. A–95–11) detailing the waiver process and discussing the information hospitals must provide in requesting a waiver. We indicated that upon receipt of a waiver request, we would publish a **Federal Register** notice to solicit public comments, as required by section 1138(a)(2)(D) of the Act.

According to these requirements, we will review the comments received. During the review process, we may consult on an as-needed basis with the Health Resources and Services Administration's Division of Transplantation, the United Network for Organ Sharing, and our regional offices. If necessary, we may request additional clarifying information from the applying hospital or others. We will then make a final determination on the waiver request and notify the hospital and the designated and requested OPOs.

III. Hospital Waiver Request

In accordance with § 486.308(e), the following hospital has requested a waiver to enter into an agreement with a designated OPO other than the OPO designated for the service area in which the hospital is located:

Carson Valley Medical Center, Gardnerville, Nevada, is requesting a waiver to work with: California Transplant Donor Network, 1000 Broadway, Suite 600, Oakland, California 94607–4099.

The Hospital's Designated OPO is: Nevada Donor Network, 2061 E. Sahara Ave., Las Vegas, Nevada 89104.

IV. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

V. Response to Public Comments

We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble.

Dated: May 2, 2014.

Marilyn Tavenner,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2014–10641 Filed 5–7–14; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–D–1601]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Custom Device Exemption

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by June 9, 2014.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–NEW and title ''Custom Device Exemption''. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, *PRAStaff@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Custom Device Exemption—(OMB Control Number 0910–NEW)

I. Background

The custom device exemption is set forth at section 520(b)(2)(B) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360j(b)(2)(B)). A custom device is in a narrow category of device that, by virtue of the rarity of the patient's medical condition or physician's special need the device is designed to treat, it would be impractical for the device to comply with premarket review regulations and performance standards.

Effective July 9, 2012, the Food and Drug Administration Safety and Innovation Act (FDASIA) implemented changes to the custom device exemption contained in section 520(b) of the FD&C Act. The new provision amended the existing custom device exemption and introduced new concepts and procedures for custom devices, such as:

- Devices created or modified in order to comply with the order of an individual physician or dentist;
- the potential for multiple units of a device type (limited to no more than five units per year) qualifying for the custom device exemption; and
- annual reporting requirements by the manufacturer to FDA about devices manufactured and distributed under section 520(b) of the FD&C Act.

Under FDASIA, ''devices'' that qualify for the custom device exemption contained in section 520(b) of the FD&C Act were clarified to include no more than ''five units per year of a particular device type'' that otherwise meet all the requirements necessary to qualify for the custom device exemption.

The guidance also provides draft definitions of terms used in the custom device exemption, explains how FDA plans to interpret the concept of ''five units per year of a particular device type'' in section 520(b)(2)(B) of the FD&C Act, describes what information manufacturers should submit in a custom device annual report (annual report) to FDA, and provides guidance on how to submit an annual report for devices distributed under the custom device exemption.

On November 19, 2012, FDA published a notice requesting comments in the **Federal Register** (77 FR 69488), requesting that stakeholders submit information on and examples of appropriate use of the custom device exemption for assistance in drafting this guidance based on specific questions asked in the notice. FDA has reviewed all the comments from the notice and has taken them into consideration for this draft guidance.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on the custom device exemption. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by using

the Internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.html.* Guidance documents are also available at *http://www.regulations.gov.* To receive ''Custom Device Exemption,'' you may either send an email request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 301–847–8149 to receive a hard copy. Please use the document number 1820 to identify the guidance you are requesting.

Draft Guidance for Custom Device Exemption

This guidance is intended to assist industry by providing draft definitions of terms used in the custom device exemption, to explain how FDA proposes to interpret the ''five units per year of a particular device type'' language contained in section 520(b)(2)(B) of the FD&C Act, to describe what information FDA proposes that should be submitted in a custom device annual report, and to provide recommendations on how to submit an annual report for devices distributed under the custom device exemption. In addition, manufacturers of custom devices are required to sign and submit a Custom Devices Annual Report Truthful and Accurate certificate with their annual report.

Description of Respondents: The respondents of this collection of information are manufacturers of medical devices deemed to be custom devices subject to FDA's laws and regulations.

In the **Federal Register** of January 14, 2014 (79 FR 2446), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Guidance Title: Custom Device Exemption	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response (in hours)	Total hours
Section VI. Annual Reporting	33	1	33	40	1,320

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA estimates it will receive 33 reports for custom devices annually. The Agency reached this estimate by the number of pre-FDASIA manufacturers who qualified for custom devices and that percentage of current manufacturers that qualify under post-FDASIA requirements. Only 10 percent of manufacturers would meet this qualification, which was calculated by adding the number of estimated old custom device manufacturers with the estimated new manufacturers submitting annual reports of custom devices each year. FDA estimates it will take custom device manufacturers approximately 40 hours to complete the annual report described in section VI of the draft guidance. FDA reached this time estimate based on its expectation of the amount of information that should be included in the report.

Before the proposed information collection provisions contained in this draft guidance become effective, FDA will publish a notice in the **Federal Register** announcing OMB's decision to approve, modify, or disapprove the information collection provisions. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

This draft guidance also refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by OMB under the PRA (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 814, subparts B and E, have been approved under OMB control number 0910–0231; the collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0078; and the collections of information in 21 CFR part 807, subpart E, have been approved under OMB control number 0910–0120.

Dated: May 5, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–10579 Filed 5–7–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–D–0052]

Draft Guidance for Industry: Food Allergen Labeling Exemption Petitions and Notifications; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing the availability of a draft guidance for industry entitled ''Draft Guidance for Industry: Food Allergen Labeling Exemption Petitions and Notifications.'' The draft guidance, when finalized, will explain our current thinking on the preparation of regulatory submissions for obtaining exemptions for ingredients from the labeling requirements for major food allergens in the Federal Food, Drug, and Cosmetic Act (the FD&C Act) through submission of either a petition or a notification.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before we begin work on the final version of the guidance, submit either electronic or written comments on the draft guidance by September 5, 2014.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Office of Food Additive Safety, Center for Food Safety and Applied Nutrition (HFS–200), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the

docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Steven Gendel, Center for Food and Applied Nutrition (HFS–200), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–1056.

SUPPLEMENTARY INFORMATION:

I. Background

We are announcing the availability of a draft guidance entitled, ''Draft Guidance for Industry: Food Allergen Labeling Exemption Petitions and Notifications.'' This draft guidance is intended to help industry prepare petitions and notifications seeking exemptions from the labeling requirements for ingredients derived from major food allergens. The Food Allergen Labeling and Consumer Protection Act of 2004 (FALCPA) (Title II, Pub. L. 108–282) amended the FD&C Act by defining the term ''major food allergen'' and stating that foods regulated under the FD&C Act are misbranded unless they declare the presence of each major food allergen on the product label using the common or usual name of that major food allergen.

Section 201(qq) of the FD&C Act (21 U.S.C. 321(qq)) now defines a major food allergen as ''[m]ilk, egg, fish (e.g., bass, flounder, or cod), Crustacean shellfish (e.g., crab, lobster, or shrimp), tree nuts (e.g., almonds, pecans, or walnuts), wheat, peanuts, and soybeans'' and also as a food ingredient that contains protein derived from such foods. The definition excludes any highly refined oil derived from a major food allergen and any ingredient derived from such highly refined oil.

In some cases, the production of an ingredient derived from a major food allergen may alter or eliminate the allergenic proteins in that derived ingredient to such an extent that it does not contain allergenic protein. In addition, a major food allergen may be used as an ingredient or as a component of an ingredient such that the level of allergenic protein in finished food products does not cause an allergic response that poses a risk to human health. Therefore, FALCPA provides two mechanisms through which such ingredients may become exempt from the labeling requirement of section 403(w)(1) of the FD&C Act (21 U.S.C. 343(w)(1)). An ingredient may obtain an exemption through submission and approval of a petition containing scientific evidence that demonstrates that the ingredient ''does not cause an allergic response that poses a risk to human health'' (section 403(w)(6) of the FD&C Act). Alternately, an ingredient may become exempt through submission of a notification containing scientific evidence showing that the ingredient ''does not contain allergenic protein'' or that there has been a previous determination through a premarket approval process under section 409 of the FD&C Act (21 U.S.C. 348) that the ingredient ''does not cause an allergic response that poses a risk to human health'' (section 403(w)(7) of the FD&C Act).

This draft guidance is being issued consistent with our good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent our current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to publish notice in the **Federal Register** soliciting public comment on each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, we will publish a 60-day notice on the proposed collection of information in a future issue of the **Federal Register**.

III. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/FoodGuidances* or *http://www.regulations.gov.* Use the FDA Web site listed in the previous sentence to find the most current version of the guidance.

Dated: May 2, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–10578 Filed 5–7–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request; Awareness and Beliefs About Cancer Survey, National Cancer Institute (NCI)

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH), has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on June 19, 2013, Vol. 78, page 36788 and allowed 60 days for public comment. Three public comments, questions, and requests for information were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Cancer Institute (NCI), National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: NIH Desk Officer.

Comment Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more

information on the proposed project, contact: Sarah Kobrin, Division of Cancer Control and Population Sciences, 9609 Medical Center Dr., MSC 9761, Rockville, MD 20852, or call non-toll-free number 240–276–6931or Email your request, including your address to: *kobrins@mail.nih.gov*. Formal requests for additional plans and instruments must be requested in writing.

Proposed Collection: Awareness and Beliefs about Cancer Survey, OMB No. 0925–0684, Expiration Date 11/30/2014, REVISION, National Cancer Institute (NCI), National Institutes of Health (NIH).

Need and Use of Information Collection: The objective of the study is gather data about American adults' awareness and beliefs about cancer. The ultimate goal is to determine how individuals' perceptions of cancer may influence their decisions to report signs and symptoms to health care providers, perhaps affecting the disease stage of diagnosis and the effectiveness of treatment. Data will be collected from approximately 1,500 adults aged 50 years or older across the United States will be recruited for the NCI Awareness and Beliefs about Cancer survey over a one-year period. This request is to include cellphone-only households in the ABC survey; the original request was to survey only landline households.

OMB approval is requested for one year. There are no costs to respondents other than their time. The total estimated annualized burden hours are 1,667.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hour
Screener	General Public	14,000	1	5/60	1,167
Survey	Adults 50+ years old	1,500	1	20/60	500

Dated: May 1, 2014.

Vivian Horovitch-Kelley,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 2014–10591 Filed 5–7–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request; Evaluation of Center for Global Health's (CGH) Workshops (NCI)

Summary: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI), National Institutes of Health (NIH), will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

To Submit Comments and for Further Information: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Sudha Sivaram, Program Director, Center for Global Health, National Cancer Institute, 9609 Medical Center Dr., RM 3W528, Rockville MD, 20850 or call non-toll-free number 240–276–5804 or Email your request, including your address to: *sudha.sivaram@nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

Comment Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Proposed Collection: Evaluation of Center for Global Health's (CGH) Workshops (NCI), 0925–NEW, National Cancer Institute (NCI), National Institutes of Health (NIH).

Need and Use of Information Collection: This submission is a request for OMB to approve the Evaluation of Center for Global Health's (CGH) Workshops for three years. These workshops are organized and funded by the National Cancer Institute's CGH in conjunction with various partners ranging from foreign Ministries of Health and research institutions, to international non-governmental organizations (NGOs) and U.S. academic institutions. The workshops to be evaluated are the Symposiums on Global Cancer Research, Workshops in Cancer Control Planning and Implementation, the Summer Curriculum in Cancer Prevention, Women's Empowerment Cancer Advisory Network Workshops (WE–CAN), Regional Grant Writing and Peer Review Workshops and other similar workshops. While these workshops differ in content and delivery style, their underlying goals are the same; they intend to initiate and enhance cancer control efforts, increase capacity for cancer research, foster new partnerships, and create research and cancer control networks. The proposed evaluation requests information about the outcomes of each of these workshops including (1) new cancer research partnerships and networks (2) cancer control partnerships and networks, (3) effects on cancer research, and (4) effect on cancer control planning and implementation efforts. The information will be collected 3–12 months after the workshops and is needed to evaluate the effectiveness of these workshops in order to inform future programming and funding decisions.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 203.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents/ year	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
Chief Executives, Medical Scientists, Health Educators, Family/General Practitioners, Registered Nurses, Medical and Health Services Managers.	Symposium on Global Cancer Research.	150	1	20/60	50
	Workshop in Cancer Control Planning and Implementation.	140	1	20/60	47
	The Summer Curriculum in Cancer Prevention.	27	1	30/60	14
	Women's Empowerment Cancer Advocacy Network (We-Can).	140	1	20/60	47
	Regional Grant Writing and Peer Review Workshop.	60	1	30/60	30
	Other CGH Workshops	30	1	30/60	15

Dated: May 1, 2014.

Vivian Horovitch-Kelley,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 2014–10590 Filed 5–7–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-day Comment Request; NCI Cancer Genetics Services Directory Web-Based Application and Update Mailer

Summary: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI), National Institutes of Health (NIH), will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

To Submit Comments and for Further Information: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Margaret Beckwith, International Cancer Research Databank Branch, Office of Communications and Education, 9609 Medical Center Drive, MSC 9776, Bethesda, MD 20892–9776 or call non-toll-free number 240–376–6593 or Email your request, including your address to: *mbeckwit@mail.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

Comment Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Proposed Collection: NCI Cancer Genetics Services Directory Web-Based Application and Update Mailer, 0925–0639, Date 08/31/2014, Revision, National Cancer Institute (NCI), National Institutes of Health (NIH).

Need and Use of Information Collection: The Office of Communications and Education International Cancer Research Databank Branch has created the NCI Cancer Genetics Services Directory on NCI's Web site Cancer.gov. This directory is a searchable collection of information about professionals who provide services related to cancer genetics. These services include cancer risk assessment, genetic counseling, and genetic susceptibility testing. The professionals have applied to be in the directory using an online application form and have met basic criteria outlined on the form.

There are currently 587 genetics professionals listed in the directory. Approximately 30–60 new professionals are added to the directory each year. The applicants are nurses, physicians, genetic counselors, and other professionals who provide services related to cancer genetics. The information collected on the application form includes name, professional qualifications, practice locations, and the area of specialization. The information is updated annually using a Web-based update mailer that mirrors the application form.

The NCI Cancer Genetics Services Directory is a unique resource for cancer patients and their families who are looking for information about their family risk of cancer and genetic counseling. Collecting applicant information and verifying it annually by using the NCI Cancer Genetics Services Directory Web-based Application Form and Update Mailer is important for providing this information to the public and for keeping it current.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 180.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
Web-based Application Form	Genetics Professional	60	1	30/60	30
Web-based Update Mailer	Genetics Professional	600	1	15/60	150

Dated: April 30, 2014.

Karla Bailey,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 2014–10521 Filed 5–7–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request; Food and Drug Administration (FDA) and the National Cancer Institute (NCI) Health Communication Survey (FDA–NCI)

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI), National Institutes of Health (NIH), will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

To Submit Comments and for Further Information: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project contact: Bradford W. Hesse, Ph.D., Health Communication and Informatics Research Branch, 9609 Medical Center Drive, MSC 9761, Room 3E610, Rockville, MD 20850 or call non-toll free number 240–276–6721 or Email your request, including your address, to *hesseb@mail.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

Comment Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Proposed Collection: Food and Drug Administration (FDA) and the National Cancer Institute (NCI) Health Communication Survey (FDA–NCI), 0925–NEW, National Cancer Institute (NCI), National Institutes of Health (NIH).

Need and Use of Information Collection: This partnership between NCI and FDA will include assessing the public's knowledge of medical devices, communications related to product recalls, nutritional supplement labeling, and topics to inform FDA's regulatory authority over tobacco, such as risk perceptions about new tobacco products, product pack color gradations, perceptions of product harm, and tobacco product claims and labels. This NCI–FDA survey will couple knowledge-related questions with inquiries into the communication channels through which understanding is being obtained, and assessment of FDA-regulated material. This survey will extend the information collected and priorities from the Health Information National Trends Survey (HINTS) which has been to provide a comprehensive assessment of the American public's current access to, and use of, information about cancer across the cancer care continuum from cancer prevention, early detection, diagnosis, treatment, and survivorship.

OMB approval is requested for 1 year. There are no costs to respondents other than their time. The total estimated annualized burden hours are 2,159.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hour
Individuals	4,318	1	30/60	2,159

Dated: May 1, 2014.

Vivian Horovitch-Kelley,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 2014–10520 Filed 5–7–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning

individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Advancing Translational Sciences Special Emphasis Panel; SBIR Contract Review-3.

Date: June 3, 2014.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892.

Contact Person: Sailaja Koduri, Ph.D., Scientific Review Officer, Office of Scientific Review, National Center for Advancing Translational Sciences, 6701 Democracy Blvd., Room 1074, Bethesda, MD 20892, 301–435–0813, *Sailaja.koduri@nih.gov*.

Name of Committee: National Center for Advancing Translational Sciences Special Emphasis Panel; SBIR PHASE II.

Date: June 4, 2014.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892.

Contact Person: Rahat Khan, Ph.D., Scientific Review Officer, Office of Scientific Review, National Center for Advancing, Translational Sciences, 6701 Democracy Blvd., Rm 1078, Bethesda, MD 20892, 301–894–7319, *khanr2@csr.nih.gov*.

Name of Committee: National Center for Advancing Translational Sciences Special Emphasis Panel; Data Visualization.

Date: June 5, 2014.

Time: 1:30 p.m. to 3:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892.

Contact Person: Carol Lambert, Ph.D., Acting Deputy Director, Office of Grants Management & Scientific Review, National Center for Advancing Translational Sciences (NCATS), National Institutes of Health, 6701 Democracy Boulevard, Democracy 1, Room 1076, Bethesda, MD 20892, 301–435–0814, *lambert@mail.nih.gov*.

Dated: May 5, 2014.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–10606 Filed 5–7–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Clinical Neuroscience and Neurodegeneration Study Section.

Date: June 2, 2014.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Samuel C Edwards, Ph.D., Chief, Brain Disorders and Clinical Neuroscience, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7846, Bethesda, MD 20892, (301) 435–1246, *edwardss@csr.nih.gov*.

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Behavioral Genetics and Epidemiology Study Section.

Date: June 2, 2014.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Melrose Hotel, 2430 Pennsylvania Ave NW., Washington, DC 20037.

Contact Person: George Vogler, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3140, MSC 7770, Bethesda, MD 20892, (301) 237–2693, *voglergp@csr.nih.gov.*

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Lung Cellular, Molecular, and Immunobiology Study Section.

Date: June 3–4, 2014.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Pier 5 Hotel, 711 Eastern Avenue, Baltimore, MD 21202.

Contact Person: George M Barnas, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, 301–435–0696, *barnasg@csr.nih.gov*.

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Biochemistry and Biophysics of Membranes Study Section.

Date: June 3, 2014.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M St NW., Washington, DC 20036.

Contact Person: Nuria E Assa-Munt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4164, MSC 7806, Bethesda, MD 20892, (301) 451–1323, *assamunu@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Vascular and Hematology.

Date: June 4, 2014.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Katherine M Malinda, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7814, Bethesda, MD 20892, 301–435–0912, *Katherine_Malinda@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Biophysics of Neural Systems Study Section.

Date: June 5, 2014.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Monaco, Baltimore, 2 North Charles Street, Baltimore, MD 21201.

Contact Person: Geoffrey G Schofield, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040–A, MSC 7850, Bethesda, MD 20892, 301–435–1235, *geoffreys@csr.nih.gov.*

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Biomedical Imaging Technology B Study Section.

Date: June 5–6, 2014.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Crown Plaza St. Louis—Downtown, 200 N. Fourth Street, St. Louis, MO 63102.

Contact Person: Lee Rosen, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171, *rosenl@csr.nih.gov*.

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group; Nanotechnology Study Section.

Date: June 5–6, 2014.

Time: 8:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz Carlton Hotel, 1150 22nd Street NW., Washington, DC 20037.

Contact Person: James J Li, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7849, Bethesda, MD 20892, 301–806–8065, *lijames@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Risk, Prevention and Intervention for Addictions Study Section.

Date: June 5–6, 2014.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue NW., Washington, DC 20036.

Contact Person: Miriam Mintzer, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive Room 3108, Bethesda, MD 20892, 301–523–0646, *mintzermz@csr.nih.gov.*

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group; Basic Mechanisms of Cancer Therapeutics Study Section.

Date: June 5, 2014.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz Carlton Hotel, 1150 22nd Street NW., Washington, DC 20037.

Contact Person: Lambratu Rahman Sesay, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, 301–451–3493, *rahman-sesayl@csr.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group; Cellular Signaling and Regulatory Systems Study Section.

Date: June 5, 2014.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Torrance Marriott South Bay, 3635 Fashion Way, Torrance, CA 90503.

Contact Person: Elena Smirnova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5187, MSC 7840, Bethesda, MD 20892, 301–357–9112, *smirnove@csr.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group; Nuclear and Cytoplasmic Structure/Function and Dynamics Study Section.

Date: June 5, 2014.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Mayflower Park Hotel, 405 Olive Way, Seattle, WA 98101.

Contact Person: David Balasundaram, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5189, MSC 7840, Bethesda, MD 20892, 301–435–1022, *balasundaramd@csr.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Macromolecular Structure and Function C Study Section.

Date: June 5, 2014.

Time: 8:00 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Kinzie Hotel, 20 W Kinzie St., Chicago, IL 60654.

Contact Person: William A Greenberg, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892, (301) 435–1726, *greenbergwa@csr.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Skeletal Muscle and Exercise Physiology Study Section.

Date: June 5–6, 2014.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Historic Inns of Annapolis, 58 State Circle, Annapolis, MD.

Contact Person: Richard Ingraham, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7814, Bethesda, MD 20892, 301–496–8551, *ingrahamrh@mail.nih.gov.*

Name of Committee: Immunology Integrated Review Group; Hypersensitivity, Autoimmune, and Immune-mediated Diseases Study Section.

Date: June 5–6, 2014.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Bahiru Gametchu, DVM, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, 301–408–9329, *gametchb@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Molecular Neuropharmacology and Signaling Study Section.

Date: June 5, 2014.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Lorien Hotel & Spa, 1600 King Street, Alexandria, VA 22314.

Contact Person: Deborah L Lewis, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4183, MSC 7850, Bethesda, MD 20892, 301–408–9129, *lewisdeb@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Aging Systems and Geriatrics Study Section.

Date: June 5–6, 2014.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Allerton Hotel, 701 North Michigan Avenue, Chicago, IL 60611.

Contact Person: James P Harwood, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7840, Bethesda, MD 20892, 301–435–1256, *harwoodj@csr.nih.gov.*

Name of Committee: Immunology Integrated Review Group; Cellular and Molecular Immunology—A Study Section.

Date: June 5–6, 2014.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: David B Winter, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, 301–435–1152, *dwinter@mail.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Genomics, Computational Biology and Technology Study Section.

Date: June 5–6, 2014.

Time: 8:30 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Westin Georgetown, 2350 M St. NW., Washington, DC 20010.

Contact Person: Barbara J Thomas, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2218, MSC 7890, Bethesda, MD 20892, 301–435–0603, *bthomas@csr.nih.gov.*

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Medical Imaging Study Section.

Date: June 5–6, 2014.

Time: 7:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Crown Plaza St. Louis—Downtown, 200 N. Fourth Street, St. Louis, MO 631023.

Contact Person: Xiang-Ning Li, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7854, Bethesda, MD 20892, 301–435–1744, *lixiang@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS).

Dated: May 2, 2014.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–10492 Filed 5–7–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meetings

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of meetings of the National Cancer Institute Clinical Trials and Translational Research Advisory Committee.

The meetings will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Cancer Institute Clinical Trials and Translational Research Advisory Committee.

Date: June 18, 2014.

Time: 4 p.m. to 5 p.m.

Agenda: Review of the CTAC Small Cell Lung Cancer (SCLC) Working Group's Report.

Place: National Cancer Institute Shady Grove, Shady Grove, 9609 Medical Center Drive, 6 West—CCCT Huddle, Rockville, MD 20892 (Virtual Meeting).

Go To: https://cbiit.webex.com/cbiit/j.php?MTID=mb9db8379b9faf5ef42f384b469c5ebdb.

Meeting Password—Tim@l1ne.

Meeting Number—730 501 868.

AUDIO CONNECTION

1. Provide your number when you join the meeting to receive a call back. Alternatively, you can call one of the following numbers: Dial In Number: 1–240–276–6338.
2. Follow the instructions that you hear on the phone. Your Cisco Unified Meeting Place meeting ID: 730 501 868.

Contact Person: Sheila A. Prindiville, MD, MPH, Director, Coordinating Center for Clinical Trials, National Institutes of Health, National Cancer Institute, Coordinating Center for Clinical Trials, 9609 Medical Center Drive Room 6W136, Rockville, MD 20850, 240–276–6173, *prindivs@mail.nih.gov*.

Name of Committee: Clinical Trials Strategic Planning Subcommittee, National Cancer Institute Clinical Trials and Translational Research Advisory Committee.

Date: July 8, 2014.

Time: 2 p.m. to 3 p.m.

Agenda: Review the final report of the NCI National Clinical Trials Network Working Group.

Place: National Cancer Institute Shady Grove, 6West CCCT Huddle Room, 9609 Medical Center Drive, Rockville, MD 20850 (Teleconference), 1–866–652–9542, Password: 4596704.

Contact Person: Sheila A. Prindiville, MD, MPH, Director, Coordinating Center for Clinical Trials, National Institutes of Health, National Cancer Institute, 9609 Medical Center Drive Room 6W136 Rockville, MD 20850, 240–276–6173, *prindivs@mail.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/ctac/ctac.htm,* where agendas and any additional information for the meetings will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 5, 2014.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–10608 Filed 5–7–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Neuromuscular Interactions Influencing Sarcopenia.

Date: June 10, 2014.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Elaine Lewis, Ph.D., Scientific Review Branch, National Institute on Aging, Gateway Building, Suite 2C212, MSC–9205, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–402–7707, *elainelewis@nia.nih.gov*.

Name of Committee: National Institute on Aging Special Emphasis Panel; Alzheimer's Disease Drug Development.

Date: June 18, 2014.

Time: 10 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892.

Contact Person: Alexander Parsadanian, Ph.D., Scientific Review Officer, National Institute on Aging, Gateway Building 2C/212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–496–9666, *parsadaniana@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: May 5, 2014.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–10602 Filed 5–7–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Mental Health.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the NATIONAL INSTITUTE OF MENTAL HEALTH, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Mental Health.

Date: June 2–4, 2014.

Time: 3:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Hilton Washington/Rockville 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Jennifer E. Mehren, Ph.D., Executive Secretary, Division of Intramural Research Programs, National Institute of Mental Health, NIH, 35A Convent Drive, Room GE 412, Bethesda, MD 20892–3747, 301–496–3501, *mehrenj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: May 2, 2014.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–10604 Filed 5–7–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Heart, Lung, and Blood Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Advisory Council.

Date: June 11, 2014.

Open: 8:00 a.m. to 3:00 p.m.

Agenda: To discuss program policies and issues.

Place: National Institutes of Health, Building 31, C Wing, 6th Floor, Conference Room 10, 31 Center Drive, Bethesda, MD 20892.

Closed: 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, C Wing, 6th Floor, Conference Room 10, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Stephen C. Mockrin, Ph.D. Director, Division of Extramural Research Activities National Heart, Lung, and Blood Institute National Institutes of Health, 6701 Rockledge Drive, Room 7100, Bethesda, MD 20892 (301) 435–0260 *mockrins@nhlbi.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *www.nhlbi.nih.gov/meetings/nhlbac/index.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS).

Dated: May 2, 2014.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–10491 Filed 5–7–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Program Project Applications (P01).

Date: June 3, 2014.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, Room 3266, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Maja Maric, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, DHHS/NIH/NIAID, 6700B Rockledge Drive, Room 3266, Bethesda, MD 20892–7616, (301) 451–2634, *maja.maric@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 5, 2014.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–10607 Filed 5–7–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

Date: June 3, 2014.

Open: 8:30 a.m. to 12:30 p.m.

Agenda: Discussion of Program Policies.

Place: National Institutes of Health, Building 31, 6th Floor, Room 6C6, 31 Center Drive, Bethesda, MD 20892.

Closed: 1:30 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 6th Floor, Room 6C6, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Laura K. Moen, Ph.D., Director, Division of Extramural Research Activities, NIAMS/NIH, 6700 Democracy Boulevard, Suite 800, Bethesda, MD 20892, 301–451–6515, *moenl@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the

name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: May 2, 2014.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–10603 Filed 5–7–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; Sensor Prototype Validation Review.

Date: June 3–4, 2014.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Environmental Health Sciences, National Institutes of Health, Keystone Building, Room 3076, 530 Davis Drive, Research Triangle Park, NC 27709 (Virtual Meeting).

Contact Person: Sally Eckert-Tilotta, Scientific Review Officer, Nat. Institute of Environmental Health Sciences, Office of Program Operations, Scientific Review Branch, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–1446, *eckertt1@niehs.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: May 2, 2014.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–10605 Filed 5–7–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of HHS-Certified Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITF) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); and on April 30, 2010 (75 FR 22809).

A notice listing all currently HHS-certified laboratories and IITFs is published in the **Federal Register** during the first week of each month. If any laboratory or IITF certification is suspended or revoked, the laboratory or IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory or IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://www.workplace.samhsa.gov.*

FOR FURTHER INFORMATION CONTACT: Giselle Hersh, Division of Workplace Programs, SAMHSA/CSAP, Room 7–1051, One Choke Cherry Road, Rockville, Maryland 20857; 240–276–2600 (voice), 240–276–2610 (fax).

SUPPLEMENTARY INFORMATION: The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. The ''Mandatory Guidelines for Federal Workplace Drug Testing Programs,'' as amended in the revisions listed above, requires strict standards that laboratories and IITFs must meet in order to conduct drug and specimen validity tests on urine specimens for federal agencies.

To become certified, an applicant laboratory or IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory or IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and IITFs in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A HHS-certified laboratory or IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA), which attests that it has met minimum standards.

In accordance with the Mandatory Guidelines dated November 25, 2008 (73 FR 71858), the following HHS-certified laboratories and IITFs meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

HHS-Certified Instrumented Initial Testing Facilities

Gamma-Dynacare Medical Laboratories, 6628 50th Street NW., Edmonton, AB Canada T6B 2N7, 780–784–1190.

HHS-Certified Laboratories

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 585–429–2264.

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400. (Formerly: Aegis Sciences Corporation, Aegis Analytical Laboratories, Inc., Aegis Analytical Laboratories).

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823, (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.)

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA

23236, 804–378–9130, (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.)

Baptist Medical Center-Toxicology Laboratory, 11401 I–30, Little Rock, AR 72209–7056, 501–202–2783, (Formerly: Forensic Toxicology Laboratory Baptist Medical Center).

Clinical Reference Lab, 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917.

DrugScan, Inc., 200 Precision Road, Suite 200, Horsham, PA 19044, 800–235–4890.

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609.

Fortes Laboratories, Inc., 25749 SW Canyon Creek Road, Suite 600, Wilsonville, OR 97070, 503–486–1023.

Gamma-Dynacare Medical Laboratories*, A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630.

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387.

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.).

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group).

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center).

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845, (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.).

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244.

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295.

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088.

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515.

One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504, 888–747–3774, (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory).

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory).

Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991/800–541–7891x7,

Phamatech, Inc., 10151 Barnes Canyon Road, San Diego, CA 92121, 858–643–5555.

Quest Diagnostics Incorporated, 1777 Montreal Circle, Tucker, GA 30084, 800–729–6432, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 8401 Fallbrook Ave., West Hills, CA 91304, 818–737–6370, (Formerly: SmithKline Beecham Clinical Laboratories).

Redwood Toxicology Laboratory, 3700650 Westwind Blvd., Santa Rosa, CA 95403, 800–255–2159.

Southwest Laboratories, 4625 E. Cotton Center Boulevard, Suite 177, Phoenix, AZ 85040, 602–438–8507/800–279–0027.

STERLING Reference Laboratories, 2617 East L Street, Tacoma, Washington 98421, 800–442–0438.

US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085.

The following laboratory voluntarily withdrew from the NLCP on May 2, 2014:

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 574–234–4176x1276.

The following laboratory voluntarily withdrew from the NLCP on May 15, 2014:

Doctors Laboratory, Inc., 2906 Julia Drive, Valdosta, GA 31602, 229–671–2281.

*The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on April 30, 2010 (75 FR 22809). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Janine Denis Cook,

Chemist, Division of Workplace Programs, Center for Substance Abuse Prevention, SAMHSA.

[FR Doc. 2014–10548 Filed 5–7–14; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0078]

Agency Information Collection Activities: Automated Clearinghouse

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 60-day notice and request for comments; extension of an existing collection of information.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Automated Clearinghouse. CBP is proposing that this information collection be extended

with no change to the burden hours or to the information collected. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before July 7, 2014 to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Automated Clearinghouse.

OMB Number: 1651–0078.

Form Number: CBP Form 400.

Abstract: The Automated Clearinghouse (ACH) allows participants in the Automated Broker Interface (ABI) to transmit daily statements, deferred tax, and bill payments electronically through a financial institution directly to a CBP account. ACH debit allows the payer to exercise more control over the payment process. In order to participate in ACH debit, companies must complete CBP Form 400, *ACH Application.* Participants also use this form to notify CBP of changes to bank information or contact information. The ACH procedure is authorized by 19 U.S.C. 1202, and provided for by 19 CFR 24.25. CBP Form 400 is accessible at *http://www.cbp.gov/sites/default/files/documents/CBP%20Form%20400.pdf.*

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 1,443.

Estimated Number of Annual Responses per Respondent: 2.

Estimated Number of Total Annual Responses: 2,886.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 240.

Dated: May 1, 2014.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2014–10631 Filed 5–7–14; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0093]

Agency Information Collection Activities: Declaration of Owner and Declaration of Consignee when Entry is Made by an Agent

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-day notice and request for comments; extension of an existing collection of information.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Declaration of Owner and Declaration of Consignee when Entry is made by an Agent (CBP Forms 3347 and 3347A). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before June 9, 2014 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** (79 FR 11815) on March 3, 2014, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10. CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Declaration of Owner and Declaration of Consignee when Entry is made by an Agent.

OMB Number: 1651–0093.

Form Number: CBP Forms 3347 and 3347A.

Abstract: CBP Form 3347, *Declaration of Owner,* is a declaration from the owner of imported merchandise stating that he/she agrees to pay additional or increased duties, therefore releasing the importer of record from paying such duties. This form must be filed within 90 days from the date of entry. CBP Form 3347 is provided for by 19 CFR 24.11 and 141.20.

When entry is made in a consignee's name by an agent who has knowledge of the facts and who is authorized under a proper power of attorney by that consignee, a declaration from the consignee on CBP Form 3347A, *Declaration of Consignee when Entry is made by an Agent,* shall be filed with the entry summary. If this declaration is filed, then no bond to produce a declaration of the consignee is required. CBP Form 3347 is provided for by 19 CFR 141.19(b)(2).

CBP Forms 3347 and 3347A are authorized by 19 U.S.C. 1485(d) and are accessible at *http://www.cbp.gov/newsroom/publications/forms.*

Current Actions: This submission is being made to extend the expiration date with no change to the burden hours. There is no change to the information being collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

CBP Form 3347

Estimated Number of Respondents: 900.

Estimated Number of Responses per Respondent: 6.

Estimated Total Annual Responses: 5,400.

Estimated Time per Response: 6 minutes.

Estimated Total Annual Burden Hours: 540.

CBP Form 3347A

Estimated Number of Respondents: 50.

Estimated Number of Responses per Respondent: 6.

Estimated Total Annual Responses: 300.

Estimated Time per Response: 6 minutes.

Estimated Total Annual Burden Hours: 30.

Dated: May 1, 2014.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2014–10626 Filed 5–7–14; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of SGS North America, Inc., as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of SGS North America, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that SGS North America, Inc., has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes for the next three years as of January 14, 2014.

DATES: The accreditation and approval of SGS North America, Inc., as commercial gauger and laboratory became effective on January 14, 2014. The next triennial inspection date will be scheduled for January 2017.

FOR FURTHER INFORMATION CONTACT: Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that SGS North America, Inc., 4575 Jerry Ware Drive, Beaumont, TX 77705, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. SGS North America, Inc., is approved for the following gauging procedures for petroleum and certain petroleum products set forth by the American Petroleum Institute (API):

API Chapters	Title
3	Tank gauging.
7	Temperature Determination.
12	Calculations.
17	Maritime Measurements.
8	Sampling.

SGS North America, Inc., is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27–01	ASTM D–287	Standard test method for API Gravity of crude petroleum products and petroleum products (Hydrometer Method).
27–03	ASTM D–4006	Standard test method for water in crude oil by distillation.
27–48	ASTM D–4052	Standard test method for density and relative density of liquids by digital density meter.
27–13	ASTM D–4294	Standard test method for sulfur in petroleum and petroleum products by energy-dispersive x-ray fluorescence spectrometry.
27–04	ASTM D–95	Standard test method for water in petroleum products and bituminous materials by distillation.
27–05	ASTM D–4928	Standard Test Method for Water in crude oils by Coulometric Karl Fischer Titration.
27–11	ASTM D–445	Standard test method for kinematic viscosity of transparent and opaque liquids (and calculations of dynamic viscosity).
27–54	ASTM D–1796	Standard test method for water and sediment in fuel oils by the centrifuge method (Laboratory procedure).
27–06	ASTM D–473	Standard test method for sediment in crude oils and fuel oils by the extraction method.
27–50	ASTM D–93	Standard test methods for flash point by Penske-Martens Closed Cup Tester.
27–14	ASTM D–2622	Standard Test Method for Sulfur in Petroleum Products (X-Ray Spectrographic Methods).

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or

gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/sites/default/files/documents/gaulist_3.pdf*

Dated: April 30, 2014.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2014–10632 Filed 5–7–14; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Intertek USA, Inc., as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Intertek USA, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Intertek USA, Inc., has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of July 16, 2013.

DATES: *Effective Dates:* The accreditation and approval of Intertek USA, Inc., as commercial gauger and laboratory became effective on July 16, 2013. The next triennial inspection date will be scheduled for July 2016.

FOR FURTHER INFORMATION CONTACT: Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Intertek USA, Inc., 1881 State Road 84, Bay 105, Ft. Lauderdale, FL 33315, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Intertek USA, Inc. is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API Chapters	Title
3	Tank gauging.
7	Temperature determination.
8	Sampling.
9	Density Determinations.
12	Calculations.
17	Maritime measurement.

Intertek USA, Inc. is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27–04	D95	Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation.
27–06	D473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27–08	D86	Standard Test Method for Distillation of Petroleum Products.
27–11	D445	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids.
27–13	D4294	Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry.
27–48	D4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.
27–54	D1796	Standard Test Method for Water and Sediment in Fuel Oils by the Centrifuge Method.
27–58	D5191	Standard Test Method For Vapor Pressure of Petroleum Products.

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.*

Date: April 30, 2014.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2014–10601 Filed 5–7–14; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Intertek USA, Inc., as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Intertek USA, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Intertek USA, Inc., has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of August 28, 2013.

DATES: The accreditation and approval of Intertek USA, Inc., as commercial gauger and laboratory became effective on August 28, 2013. The next triennial inspection date will be scheduled for August 2016.

FOR FURTHER INFORMATION CONTACT: Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Intertek USA, Inc., 152 Blandes Ln., Suite C, Glen

Burnie, MD 21061, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Intertek USA, Inc. is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API Chapters	Title
3	Tank gauging.
7	Temperature determination.
8	Sampling.
9	Density Determinations.
12	Calculations.
17	Maritime measurement.

Intertek USA, Inc.is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27–08	D86	Standard Test Method for Distillation of Petroleum Products.
27–11	D445	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids.
27–13	D4294	Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry.
27–48	D4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.
27–54	D1796	Standard Test Method for Water and Sediment in Fuel Oils by the Centrifuge Method.
27–57	D7039	Standard Test Method for Sulfur in Gasoline and Diesel Fuel by Monochromatic Wavelength Dispersive X-Ray Fluorescence Spectrometry.

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.*

Dated: April 30, 2014.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2014–10609 Filed 5–7–14; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Approval of Los Angeles Bunker Surveyors, Inc., as a Commercial Gauger

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of approval of Los Angeles Bunker Surveyors, Inc., as a commercial gauger.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Los Angeles Bunker Surveyors, Inc., has been approved to gauge petroleum and certain petroleum products for customs purposes for the next three years as of July 30, 2013.

DATES: The approval of Los Angeles Bunker Surveyors, Inc., as commercial gauger became effective on July 30, 2013. The next triennial inspection date will be scheduled for July 2016.

FOR FURTHER INFORMATION CONTACT: Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.13, that Los Angeles Bunker Surveyors, Inc., 214 North Marine Ave, Wilmington, CA 90744, has been approved to gauge petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.13. Los Angeles Bunker Surveyors, Inc. is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API Chapters	Title
7	Temperature determination.
11	Physical Properties.
12	Calculations.
17	Maritime measurement.

Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.*

Dated: April 30, 2014.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2014–10627 Filed 5–7–14; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Intertek USA, Inc., as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Intertek USA, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Intertek USA, Inc. has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of November 28, 2012.

DATES: The accreditation and approval of Intertek USA, Inc., as commercial gauger and laboratory became effective on November 28, 2012. The next triennial inspection date will be scheduled for November 2015.

FOR FURTHER INFORMATION CONTACT: Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Intertek USA, Inc., 230 Crescent Ave, Chelsea, MA 02150, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Intertek USA, Inc. is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API Chapters	Title
3	Tank gauging.
7	Temperature determination.
8	Sampling.
12	Calculations.
17	Maritime measurement.

Intertek USA, Inc. is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27–48	ASTM D4052	Standard test method for density and relative density of liquids by digital density meter.
27–08	ASTM D86	Standard test method for distillation of petroleum products at atmospheric pressure.
27–50	ASTM D93	Standard test methods for flash point by Penske-Martens Closed Cup Tester.
27–58	ASTM D5191	Standard test method for vapor pressure of petroleum products (mini-method).
27–57	ASTM D7039	Standard Test Method for Sulfur in Gasoline and Diesel Fuel by Monochromatic Wavelength Dispersive X-Ray Fluorescence Spectrometry.
27–10	ASTM D323	Standard Test Method for Vapor Pressure of Petroleum Products (Reid Method).

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov*. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories*.

Dated: April 30, 2014.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2014–10628 Filed 5–7–14; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Approval of Intertek USA, Inc., as a Commercial Gauger

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of approval of Intertek USA, Inc., as a commercial gauger.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Intertek USA, Inc., has been approved to gauge petroleum and certain petroleum products for customs purposes for the next three years as of July 24, 2012.

DATES: The approval of Intertek USA, Inc., as commercial gauger became effective on July 24, 2012. The next triennial inspection date will be scheduled for July 2015.

FOR FURTHER INFORMATION CONTACT: Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.13, that Intertek USA, Inc., 91–110 Hanua St. #204, Kapolei, HI 96707, has been approved to gauge petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.13. Intertek USA, Inc. is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API Chapters	Title
3	Tank gauging.
7	Temperature determination.
8	Sampling.
12	Calculations.
17	Maritime measurement.

Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the gauger service requested. Alternatively, inquiries regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov*. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.*

Dated: April 30, 2014.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2014–10622 Filed 5–7–14; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Intertek USA, Inc., as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Intertek USA, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Intertek USA, Inc., has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of September 11, 2013.

DATES: The accreditation and approval of Intertek USA, Inc., as commercial gauger and laboratory became effective on September 11, 2013. The next triennial inspection date will be scheduled for September 2016.

FOR FURTHER INFORMATION CONTACT: Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Intertek USA, Inc., 1941 Freeman Ave, Suite A, Signal Hill, CA 90755, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Intertek USA, Inc. is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API Chapters	Title
3	Tank gauging.
7	Temperature determination.
8	Sampling.
12	Calculations.
17	Maritime measurement.

Intertek USA, Inc.is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27–48	D4052	Standard test method for density and relative density of liquids by digital density meter.
27–46	D5002	Standard test method for density and relative density of crude oils by digital density analyzer.
27–11	D445	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids.
27–06	D473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27–03	D4006	Standard Test Method for Water in Crude Oil by Distillation.
27–05	D4928	Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration.
27–08	D86	Standard Test Method for Distillation of Petroleum Products.
27–13	D4294	Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry.
27–04	D95	Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation.
27–58	D5191	Standard Test Method For Vapor Pressure of Petroleum Products.

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.*

Dated: April 30, 2014.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2014–10623 Filed 5–7–14; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[Docket No. USCBP–2014–0010]

Request for Applicants for Appointment to the Advisory Committee on Commercial Operations of Customs and Border Protection (COAC)

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security (DHS).

ACTION: Committee Management; Request for Applicants for Appointment to COAC.

SUMMARY: U.S. Customs and Border Protection (CBP) is requesting individuals who are interested in

serving on the Advisory Committee on Commercial Operations of U.S. Customs and Border Protection (COAC) to apply for appointment. COAC provides advice and makes recommendations to the Secretaries of the Treasury and Homeland Security (DHS) on all matters involving the commercial operations of CBP and related functions.

DATES: Applications for membership should reach CBP at the address below on or before June 23, 2014.

ADDRESSES: If you wish to apply for membership, your application should be submitted by one of the following means:

- *Email: Traderelations@dhs.gov.*
- *Fax:* 202–325–4290.
- *Mail:* Ms. Wanda Tate, Management & Program Analyst, Office of Trade Relations, Customs and Border Protection, 1300 Pennsylvania Avenue NW., Room 3.5A, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Ms. Wanda Tate, Management & Program Analyst, 1300 Pennsylvania Avenue NW., Room 3.5A, Washington, DC 20229. Email *Wanda.J.Tate@cbp.dhs.gov;* telephone 202–344–1440; facsimile 202–325–4290.

SUPPLEMENTARY INFORMATION: COAC is an advisory committee established in accordance with the provisions of the *Federal Advisory Committee Act,* 5 U.S.C. App. COAC provides advice and makes recommendations to the Secretaries of the Treasury and Homeland Security (DHS) on all matters involving the commercial operations of CBP and related functions.

Balanced Membership Plans

The COAC consists of 20 members who are selected from representatives of the trade or transportation community served by CBP or others who are directly affected by CBP commercial operations and related functions. The members shall represent the interests of individuals and firms affected by the commercial operations of CBP. The members will be appointed by the Secretaries of the Treasury and Homeland Security from candidates recommended by the Commissioner of CBP. In addition, members will represent major regions of the country, and, by statute, not more than ten (10) members may be affiliated with the same political party.

It is expected that, during its upcoming fourteenth two-year term, COAC will consider issues relating to: Global supply chain security and facilitation; CBP modernization and automation; air cargo security; customs broker regulations; trade enforcement; ''One U.S. Government'' approach to exports and to trade and safety of imports; agricultural inspection; revenue collection; and protection of intellectual property rights.

Committee Meetings

The Committee meets at least once each quarter, although additional meetings may be scheduled. Generally, every other meeting of the Committee may be held outside of Washington, DC, usually at a CBP port of entry. The members are not reimbursed for travel or per diem.

Committee Membership

Membership on the Committee is personal to the appointee and a member may not send an alternate to represent him or her at a Committee meeting. Appointees will serve a two-year term of office that will be concurrent with the duration of the charter. Regular attendance is essential; a member who is absent for two consecutive meetings, or does not participate in the committee's work, may be recommended for replacement on the Committee.

No person who is required to register under the *Foreign Agents Registration Act,* 22 U.S.C. 611 *et seq.* as an agent or representative of a foreign principal may serve on this advisory Committee. If you are federally-registered lobbyist you will not be eligible to apply for appointment.

Members who are currently serving on the Committee are eligible to re-apply for membership provided that they are not in their second consecutive term and that they have met the attendance requirements. A new application letter (see **ADDRESSES** above) is required, but it may incorporate by reference materials previously filed (please attach courtesy copies). Members will not be considered Special Government Employees and will not be paid compensation by the Federal Government for their representative services with respect to the COAC.

Application for Advisory Committee Appointment

Any interested person wishing to serve on the COAC must provide the following:

- Statement of interest and reasons for application;
- Complete professional resume;
- Home address and telephone number;
- Work address, telephone number, and email address;
- Political affiliation in order to ensure balanced representation. (Required by COAC's authorizing legislation; if no party registration or allegiance exists, indicate ''independent'' or ''unaffiliated'');
- Statement of the industry you represent;
- Statement whether you are a federally-registered lobbyist; and
- Statement agreeing to submit to pre-appointment background and tax checks (mandatory). However, a national security clearance is not required for the position.

DHS does not discriminate on the basis of race, color, religion, sex, national origin, sexual orientation, gender identity, marital status, disability and genetic information, age, membership in an employee organization, or other non-merit factor. DHS strives to achieve a widely diverse candidate pool for all of its recruitment actions.

Dated: May 5, 2014.

R. Gil Kerlikowske,

Commissioner.

[FR Doc. 2014–10619 Filed 5–7–14; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–IA–2014–N083; FXIA16710900000–145–FF09A30000]

Endangered Species; Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (ESA) prohibits activities with listed species unless Federal authorization is acquired that allows such activities.

DATES: We must receive comments or requests for documents on or before June 9, 2014.

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or email *DMAFR@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I request copies of applications or comment on submitted applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an email or address not listed under **ADDRESSES**. If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I review comments submitted by others?

Comments, including names and street addresses of respondents, will be available for public review at the street address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), along with Executive Order 13576, ''Delivering an Efficient, Effective, and Accountable Government,'' and the President's Memorandum for the Heads of Executive Departments and Agencies of January 21, 2009—Transparency and Open Government (74 FR 4685; January 26, 2009), which call on all Federal agencies to promote openness and transparency in Government by disclosing information to the public, we invite public comment on these permit applications before final action is taken.

III. Permit Applications

A. Endangered Species

Applicant: Tufts University, Medford, MA; PRT–29424B

The applicant requests a permit to import biological samples from wild specimens of white-breasted thrasher (*Ramphocinclus brachyurus*) for the purpose of scientific research.

Applicant: Los Angeles Zoo, Los Angeles, CA; PRT–26922B

The applicant requests a permit to import six males and six female captive-born vicunas (*Vicugna vicugna*) from Tierpark Berlin, Germany, for the purpose of enhancement of the survival of the species.

Applicant: Owenhouse and Associates, Bozeman, MT; PRT–26384B and 35114B

The applicant requests a permit to export, re-export, and re-import two captive-born tigers (*Panthera tigris*) to worldwide locations for the purposes of enhancement of the species. The permit numbers and animals are 26384B, Shekinah (Vam) and 35114B, Sheena (Ham). This notification covers activities to be conducted by the applicant over a 3-year period.

Applicant: Dallas World Aquarium, Dallas, TX; PRT–30341B

The applicant requests a permit to import one male and one female Resplendent quetzal (*Pharomachrus mocinno*) for the purpose of enhancement of the species through zoological display and conservation education.

Applicant: Zoological Society of San Diego, San Diego, CA; PRT–31434B

The applicant requests a permit to import two female Quokkas (*Setonix brachyurus*) for the purpose of enhancement of the species through zoological display and conservation education.

Multiple Applicants

The following applicants each request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Thomas Edwards, Jacksonville, FL; PRT–34970B

Applicant: Denise Welker, Fulshear, TX; PRT–33062B

Applicant: Brian Panettiere, Northfield, MN; PRT–29246B

Applicant: Wallace White, Twin Falls, ID; PRT–30142B

Applicant: Roger Oerter, Vail, AZ; PRT–34875B

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2014–10570 Filed 5–7–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNV912. L10200000.PH0000 LXSS006F0000 261A; 14–08807; MO# 4500064556]

Notice of Public Meetings: Sierra Front-Northwestern Great Basin Resource Advisory Council, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Sierra Front-Northwestern Great Basin Resource Advisory Council (RAC), will hold two meetings in Nevada in fiscal year 2014. The meetings are open to the public.

DATES: *Dates and Times:* May 1–2 at the BLM Carson City District Office, 5665 Morgan Mill Road in Carson City, Nevada and a field trip on May 2; August 28 at Hycroft Mine, 54980 Jungo Road with a field trip the same day. Approximate meeting times are 8 a.m. to 4 p.m. However, meetings could end earlier if discussions and presentations conclude before 4 p.m. All meetings will include a public comment period at approximately 11 a.m.

FOR FURTHER INFORMATION CONTACT: Lisa Ross, Public Affairs Specialist, Carson City District Office, 5665 Morgan Mill Road, Carson City, NV 89701, telephone: (775) 885–6107, email: *lross@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in Nevada. Topics for discussion at each meeting will include, but are not limited to:

- May 1–2 (Carson City)—rangeland health assessments, Carson City Resource Management Plan, greater sage-grouse/Bi State conservation, recreation, drought, and fire restoration (Field trip on May 2).
- August 28 (Winnemucca)—landscape vegetative management and ongoing monitoring, recreation/wilderness management and Emergency Stabilization and Restoration. (Field trip on August 28).

Managers' reports of field office activities will be given at each meeting. The Council may raise other topics at the meetings.

Final agendas will be posted on-line at the BLM Sierra Front-Northwestern Great Basin RAC Web site at *http://www.blm.gov/nv/st/en/res/resource_advisory.html* and will be published in local and regional media sources at least 14 days before each meeting. Individuals who need special assistance such as sign language interpretation or other reasonable accommodations, or who wish to receive a copy of each agenda, may contact Lisa Ross no later than 10 days prior to each meeting.

Erica Haspiel-Szlosek,

Chief, Office of Communications.

[FR Doc. 2014–10567 Filed 5–7–14; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNV952000 L14200000.BJ0000 241A; 13–08807; MO# 4500064561; TAS: 14X1109]

Filing of Plats of Survey; NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the filing of Plats of Survey in Nevada.

DATES: *Effective Dates:* Unless otherwise stated filing is effective at 10:00 a.m. on the dates indicated below.

FOR FURTHER INFORMATION CONTACT: David D. Morlan, Chief, Branch of Geographic Sciences, Bureau of Land Management, Nevada State Office, 1340 Financial Blvd., Reno, NV 89502–7147, phone: 775–861–6490. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

1. The Plat of Survey of the following described lands was officially filed at the Bureau of Land Management (BLM) Nevada State Office, Reno, Nevada on February 13, 2014:

The plat, in 1 sheet, representing the dependent resurvey of the Nevada-Oregon State Line, between Mile Post No. 177+69 chs. and Mile Post No. 179, a portion of the east boundary and a portion of the subdivision-of-section lines of section 1, and the corrective dependent resurvey of a portion of the subdivision-of-section lines of section 1, Township 47 North, Range 39 East, Mount Diablo Meridian, under Group No. 908, was accepted February 11, 2014. This survey was executed at the request of the U.S. Forest Service.

2. The Supplemental Plat of the following described lands was officially filed at the BLM Nevada State Office, Reno, Nevada on March 4, 2014:

The supplemental plat, in 1 sheet, showing the subdivision of former lots 7 and 16, section 19, Township 19 South, Range 62 East, of the Mount Diablo Meridian, Nevada, under Group No. 933, was accepted March 4, 2014. This supplemental plat was prepared to accommodate the transfer of lands to the Secretary of Veterans Affairs under the provisions of Public Law 108–447 as amended by Public Law 110–161.

The survey and supplemental plat listed above are now the basic record for describing the lands for all authorized purposes. These records have been placed in the open files in the BLM Nevada State Office and are available to the public as a matter of information. Copies of the surveys and related field notes may be furnished to the public upon payment of the appropriate fees.

Dated: May 2, 2014.

David D. Morlan,

Chief Cadastral Surveyor, Nevada.

[FR Doc. 2014–10561 Filed 5–7–14; 8:45 am]

BILLING CODE 4310–HC–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–455 and 731–TA–1149 (Review)]

Circular Welded Carbon Quality Steel Line Pipe From China; Determination

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the countervailing duty order and the antidumping duty on circular welded carbon quality steel line pipe from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[2]

Background

The Commission instituted these reviews on December 2, 2013 (78 FR 72114) and determined on March 7, 2014 that it would conduct expedited reviews (79 FR 15776, March 21, 2014). The Commission completed and filed its determination in these reviews on May 2, 2014. The views of the Commission are contained in USITC Publication 4464, May 2014, entitled *Circular Welded Carbon Quality Steel Line Pipe from China: Investigation Nos. 701–TA–455 and 731–TA–1149 (Review).*

By order of the Commission.

Issued: May 2, 2014.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2014–10554 Filed 5–7–14; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Rhonda K. Schmidtlein was not a member of the Commission at the time of the vote.

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cable Television Laboratories, Inc.

Notice is hereby given that, on March 28, 2014, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Cable Television Laboratories, Inc. (''CableLabs'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, R Cable Y Telecomunicaciones Galicia, S.A., A Coruña, SPAIN, and Blizoo Media and Broadband EAD, Sofia, BULGARIA, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and CableLabs intends to file additional written notifications disclosing all changes in membership.

On August 8, 1988, CableLabs filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 7, 1988 (53 FR 34593).

The last notification was filed with the Department on December 19, 2013. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on January 28, 2014 (79 FR 4493).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2014–10515 Filed 5–7–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—ODVA, Inc.

Notice is hereby given that, on April 10, 2014, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), ODVA, Inc. (''ODVA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, Powell Industries, Inc., Houston, TX; Kwangil Electric Wire Co., Ltd., Goyang-si Gyeonggi-do, REPUBLIC OF KOREA; Broadcom Corporation, Irvine, CA; Coval S.A.S., Montélier, FRANCE; Digital Arts Sales Corporation, Baguio, PHILIPPINES; and Applied Robotics, Inc., Glenville, NY, have been added as parties to this venture.

Also, Thermo Scientific AquaSensors, Menomonee Falls, WI; Hesmor GmbH, Aachen, GERMANY; Plasmart, Inc., Daejeon, REPUBLIC OF KOREA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and ODVA intends to file additional written notifications disclosing all changes in membership.

On June 21, 1995, ODVA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 15, 1996 (61 FR 6039).

The last notification was filed with the Department on January 17, 2014. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on February 20, 2014 (79 FR 9766).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2014–10524 Filed 5–7–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—IMS Global Learning Consortium, Inc.

Notice is hereby given that, on April 7, 2014, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), IMS Global Learning Consortium, Inc. (''IMS Global'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Civitas Learning, Inc., Austin, TX; D.E. Solution spril, Brussels, BELGIUM, Edina Public Schools, Edina, MN; Intellify Learning, Boston, MA; Kentucky Community & Technical College System (KCTCS), Versailles, KY; Open Assessment Technologies S.A., Esch-sur-Alzette, LUXEMBOURG; Performance Matters, Winter Park, FL; and School District of Pickens County, Easley, SC, have been added as parties to this venture.

Also, SigongMedia, Seoul, REPUBLIC OF KOREA; CourseSmart, San Mateo, CA; and Athabasca University, Athabasaca, Alberta, CANADA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and IMS Global intends to file additional written notifications disclosing all changes in membership.

On April 7, 2000, IMS Global filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 13, 2000 (65 FR 55283).

The last notification was filed with the Department on January 31, 2014. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 4, 2014 (79 FR 12224).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2014–10523 Filed 5–7–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cooperative Research Group on Evaluation of Distributed Leak Detection Systems—Performance Testing

Notice is hereby given that, on April 3, 2014, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Southwest Research Institute—Cooperative Research Group on Evaluation of Distributed Leak Detection Systems—Performance Testing (''LDS–PT'') has filed written notifications simultaneously with the

Attorney General and the Federal Trade Commission disclosing changes in its membership, nature and objective. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Chevron Pipe Line Company, Bellaire, TX; and BP, Tulsa, OK, have been added as parties to this venture. The changes in its nature and objectives are: The period of performance has been extended to May 15, 2014; the scope of the planned activity will enter Phase II, which is intended to study the thermal and acoustic signals generated by leaks in submerged pipelines and then to perform end-to-end testing in which a leak is simulated and the technologies' alarm systems are evaluated. The objectives are to test the suitability of such technologies for detecting leaks and to understand some of the key parameters (e.g., hole location) that impact detection. Phase II will serve as the mechanism to the evaluation of these leak detection systems, facilitating (1) pooling of resources to reduce financial impact to any one company for moving forward with product validation, (2) providing the leak detection vendor community with drivers to increase innovation, (3) consolidating various test cases into a more uniform and standardized approach, and (4) providing a mechanism for capturing industry knowledge of technology limitations.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and LDS–PT intends to file additional written notifications disclosing all changes in membership.

On April 6, 2012, LDS–PT filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on May 4, 2012 (77 FR 26583).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2014–10525 Filed 5–7–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Brookwood-Sago Mine Safety Grants

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Solicitation for Grant Applications (SGA).

Announcement Type: New.
Funding Opportunity Number: SGA 14–3BS.

Catalog of Federal Domestic Assistance (CFDA) Number: 17.603

SUMMARY: The U.S. Department of Labor (DOL), Mine Safety and Health Administration (MSHA), is making $1,000,000 available in grant funds for education and training programs to help identify, avoid, and prevent unsafe working conditions in and around mines. The focus of these grants for Fiscal Year (FY) 2014 will be on training and training materials for mine emergency preparedness and mine emergency prevention for all underground mines. Applicants for the grants may be States and nonprofit (private or public) entities. The number of grants awarded will be determined by MSHA's evaluation of grant applications, not to exceed 20 grants. The amount of each individual grant will be at least $50,000.00 and the maximum individual award will be $250,000. MSHA will not be awarding renewal (two-year) grants in FY 2014 under this solicitation for grant applications (SGA). This notice contains all of the information needed to apply for grant funding.

DATES: The closing date for applications will be June 30, 2014, (no later than 11:59 p.m. EDST). MSHA will award grants on or before September 30, 2014.

ADDRESSES: Applications for grants submitted under this competition must be submitted electronically through the Grants.gov site at www.grants.gov. If applying online poses a hardship to any applicant, the MSHA Directorate of Educational Policy and Development will provide assistance to help applicants submit online.

FOR FURTHER INFORMATION CONTACT: Any questions regarding this solicitation for grant applications (SGA 14–3BS) should be directed to Janice Oates at *Oates.Janice@dol.gov* or 202–693–9570 (this is not a toll-free number) or Teresa Rivera at *Rivera.Teresa@dol.gov* or 202–693–9581 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: This solicitation provides background information and the requirements for projects funded under the solicitation. This solicitation consists of eight parts:

- Part I provides background information on the Brookwood-Sago grants.
- Part II describes the size and nature of the anticipated awards.
- Part III describes the qualifications of an eligible applicant.
- Part IV provides information on the application and submission process.
- Part V explains the review process and rating criteria that will be used to evaluate the applications.
- Part VI provides award administration information.
- Part VII contains MSHA contact information.
- Part VIII addresses Office of Management and Budget (OMB) information collection requirements.

I. Funding Opportunity Description

A. Overview of the Brookwood-Sago Mine Safety Grant Program

Responding to several coal mine disasters, Congress enacted the Mine Improvement and New Emergency Response Act of 2006 (MINER Act). When Congress passed the MINER Act, it expected that requirements for new and advanced technology, e.g., fire-resistant lifelines and increased breathable air availability in escapeways, would increase safety in mines. The MINER Act also required that every underground coal mine have persons trained in emergency response. Congress emphasized its commitment to training for mine emergencies when it strengthened the requirements for the training of mine rescue teams. Recent events demonstrate that training is the key for proper and safe emergency response and that all miners working in underground mines should be trained in emergency response.

Under Section 14 of the MINER Act, the Secretary of Labor (Secretary) is required to establish a competitive grant program called the ''Brookwood-Sago Mine Safety Grants'' (Brookwood-Sago grants). This program provides funding for education and training programs to better identify, avoid, and prevent unsafe working conditions in and around mines. This program will use grant funds to establish and implement education and training programs or to create training materials and programs. The MINER Act requires the Secretary to give priority to mine safety demonstrations and pilot projects with broad applicability. It also mandates that the Secretary emphasize programs and materials that target miners in smaller mines, including training mine operators and miners on new MSHA standards, high-risk activities, and other identified safety priorities.

B. Education and Training Program Priorities

MSHA priorities for the FY 2014 funding of the annual Brookwood-Sago grants will focus on training or training materials for mine emergency preparedness and mine emergency prevention for all underground mines.

MSHA expects Brookwood-Sago grantees to develop training materials or to develop and provide mine safety training or educational programs, recruit mine operators and miners for the training, and conduct and evaluate the training.

MSHA expects Brookwood-Sago grantees to conduct follow-up evaluations with the people who received training in their programs to measure how the training promotes the Secretary's goal of ensuring a safe and healthy workplace. Evaluations will focus on determining how effective their training was in either reducing hazards, improving skills for the selected training topics, or in improving the conditions in mines. Grantees must also cooperate fully with MSHA evaluators of their programs.

II. Award Information

A. Award Amount for FY 2014

MSHA is providing $1,000,000 for the 2014 Brookwood-Sago grant program which could be awarded in a maximum of 20 separate grants of no less than $50,000 each. Applicants requesting less than $50,000 or more than $250,000 for a 12-month performance period will not be considered for funding.

B. Period of Performance

MSHA may approve a request for a one time no-cost extension to grantees for an additional period from the expiration date of the annual award based on the success of the project and other relevant factors. See 29 CFR 95.25(e)(2).

III. Eligibility Information

A. Eligible Applicants

Applicants for the grants may be States and nonprofit (private or public) entities. Eligible entities may apply for funding independently or in partnership with other eligible organizations. For partnerships, a lead organization must be identified.

Applicants other than States and State-supported or local government-supported institutions of higher education will be required to submit evidence of nonprofit status, preferably from the Internal Revenue Service (IRS). A nonprofit entity as described in 26 U.S.C. 501(c)(4), which engages in lobbying activities, is not eligible for a grant award. See 2 U.S.C. 1611.

B. Cost-Sharing or Matching

Cost-sharing or matching of funds is not required for eligibility.

C. Other Eligibility Requirements

1. Data Universal Number System (DUNS)

Under 2 CFR 25.200(b)(3), every applicant for a Federal grant funding opportunity is required to include a DUNS number with its application. The DUNS number is a nine-digit identification number that uniquely identifies business entities. An applicant's DUNS number is to be entered into Block 8 of Standard Form (SF) 424. There is no charge for obtaining a DUNS number. To obtain a DUNS number, call 1–866–705–5711 or access the following Web site: *http://fedgov.dnb.com/webform.*

After receiving a DUNS number, all grant applicants must register as a vendor with the System for Award Management (SAM) through the Web site www.sam.gov. Grant applicants must create a user account and then complete and submit the online registration. Once the registration has been completed, it will take up to 10 business days to process. The applicant will receive an email notice that the registration is active. If the applicant had an active record in the Central Contractor Registration (CCR), they should have an active record in SAM. SAM will send notifications to the registered user via email 60, 30, and 15 days prior to expiration of the record. In addition, under 2 CFR 25.200(b)(2), each grant applicant must maintain ''an active registration with current information at all times.''

2. Legal Rules Pertaining to Inherently Religious Activities by Organizations That Receive Federal Financial Assistance

The government generally is prohibited from providing direct Federal financial assistance for inherently religious activities. See 29 CFR part 2, Subpart D. Grants under this solicitation may not be used for religious instruction, worship, prayer, proselytizing, or other inherently religious activities. Neutral, non-religious criteria that neither favor nor disfavor religion will be employed in the selection of grant recipients and must be employed by grantees in the selection of contractors and subcontractors.

3. Non-Compliant Applications

Applications that are lacking any of the required elements or do not follow the format prescribed in IV.B. will not be reviewed.

4. Late Applications

Applications received after the deadline will not be reviewed unless it is determined to be in the best interest of the Government.

IV. Application and Submission Information

A. Application Forms

This announcement includes all information and links needed to apply for this funding opportunity. The full application is available through the Grants.gov Web site at *www.grants.gov,* click the ''Applicants'' tab, then ''Apply for Grants''. The Catalog of Federal Domestic Assistance (CFDA) number needed to locate the appropriate application for this opportunity is 17.603. If an applicant has problems downloading the application package from Grants.gov, contact Grants.gov at 1–800–518–4726 or by email at *support@grants.gov.*

The full application package is also available on-line at *www.msha.gov*: Select ''Education & Training Resources,'' click on ''Courses,'' select ''Brookwood-Sago Mine Safety Grants,'' then select ''SGA 14–3BS.'' This Web site also includes all forms and all regulations that are referenced in this SGA. Applicants, however, must apply for this funding opportunity through the *Grants.gov* Web site.

B. Content and Form of the FY 2014 Application

Each grant application must address mine emergency preparedness or mine emergency prevention for underground mines. The application must consist of three separate and distinct sections. The three required sections are:

- Section 1—Project Forms and Financial Plan (No page limit).
- Section 2—Executive Summary (Not to exceed two pages).
- Section 3—Technical Proposal (Not to exceed 12 pages). Illustrative material can be submitted as an attachment.

The following are mandatory requirements for each section.

1. Project Forms and Financial Plan

This section contains the forms and budget section of the application. The Project Financial Plan will not count against the application page limits. A person with authority to bind the applicant must sign the grant application and forms. Applications submitted electronically through Grants.gov do not need to be signed manually; electronic signatures will be accepted.

(a) Completed SF–424, ''Application for Federal Assistance,''(OMB No. 4040–

0004, expiration: 8/31/2016). This form is part of the application package on Grants.gov and is also available at *www.msha.gov*. The SF–424 must identify the applicant clearly and be signed by an individual with authority to enter into a grant agreement. Upon confirmation of an award, the individual signing the SF–424 on behalf of the applicant shall be considered the representative of the applicant.

(b) Completed SF–424A, ''Budget Information for Non-Construction Programs,'' (OMB No. 4040–0006, expiration: 6/30/2014). The project budget should demonstrate clearly that the total amount and distribution of funds is sufficient to cover the cost of all major project activities identified by the applicant in its proposal, and must comply with the Federal cost principles and the administrative requirements set forth in this SGA. (Copies of all regulations that are referenced in this SGA are available online at *www.msha.gov*. Select ''Education & Training Resources,'' click on ''Courses,'' then select ''Brookwood-Sago Mine Safety Grants.'')

(c) Budget Narrative. The applicant must provide a concise narrative explaining the request for funds. The budget narrative should separately attribute the Federal funds to each of the activities specified in the technical proposal and it should discuss precisely how any administrative costs support the project goals. Indirect administrative costs for these grants may not exceed 15%. These charges must be supported with a copy of an approved Indirect Cost Rate Agreement. Indirect costs are those that are not readily identifiable with a particular cost objective but nevertheless are necessary to the general operation of an organization.

If applicable, the applicant must provide a statement about its program income. Program income is gross income earned by the grantee which is directly generated by a supported activity, or earned as a result of the award.

The amount of Federal funding requested for the entire period of performance must be shown on the SF–424 and SF–424A forms.

(d) Completed SF–424B, ''Assurances for Non-Construction Programs,'' (OMB No. 4040–0007, expiration: 6/30/2014). Each applicant for these grants must certify compliance with a list of assurances. This form is part of the application package on *www.grants.gov* and also is available at *www.msha.gov*.

(e) Supplemental Certification Regarding Lobbying Activities Form. If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the making of a grant or cooperative agreement, the applicant shall complete and submit SF–LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions. This form is part of the application package on *www.grants.gov* and is also available at *www.msha.gov*. Select ''Education & Training Resources,'' click on ''Courses,'' then select ''Brookwood-Sago Mine Safety Grants.''

(f) Non-profit status. Applicants must provide evidence of non-profit status, preferably from the IRS, if applicable.

(g) Accounting System Certification. An organization that receives less than $1 million annually in Federal grants must attach a certification stating that the organization (directly or through a designated qualified entity) has a functioning accounting system that meets the criteria below. The certification should attest that the organization's accounting system provides for the following:

(1) Accurate, current and complete disclosure of the financial results of each Federally sponsored project.

(2) Records that identify adequately the source and application of funds for Federally sponsored activities.

(3) Effective control over and accountability for all funds, property, and other assets.

(4) Comparison of outlays with budget amounts.

(5) Written procedures to minimize the time elapsing between transfers of funds.

(6) Written procedures for determining the reasonableness, allocability, and allowability of cost.

(7) Accounting records, including cost accounting records that are supported by source documentation.

(h) Attachments. The application may include attachments such as resumes of key personnel or position descriptions, exhibits, information on prior government grants, and signed letters of commitment to the project.

2. Executive Summary

The executive summary is a short one-to-two page abstract that succinctly summarizes the proposed project. MSHA will publish, as submitted, all grantees' executive summaries on the DOL Web site. The executive summary must include the following information:

(a) Applicant. Provide the organization's full legal name and address.

(b) Funding requested. List how much Federal funding is being requested.

(c) Grant Topic. List the grant topic and the location and number of mine operators and miners that the organization has selected to train or describe the training materials or equipment to be created with these funds.

(d) Program Structure. Identify the type of grant as annual.

(e) Summary of the Proposed Project. Write a brief summary of the proposed project. This summary must identify the key points of the proposal, including an introduction describing the project activities and the expected results.

3. Technical Proposal

The technical proposal must demonstrate the applicant's capabilities to plan and implement a project or create educational materials to meet the objectives of this solicitation. MSHA's focus for these grants is on training mine operators and miners and developing training materials for mine emergency preparedness or mine emergency prevention for underground mines. An Agency strategic goal is to ensure workplaces are safe and healthy for workers through strengthening and modernizing training and education and improving mine emergency response preparedness through training. MSHA has two program outcome goals, described below, that will be considered indicators of the success of the program as a whole. The following table explains the types of data grantees must provide and their relationship with the Agency's program goals and performance measures for the Brookwood-Sago grants.

MSHA's Program goals	MSHA's Performance measures	Data grantees provide each reporting period
1. Agency creates more effective training to promote safe and healthy workplaces.	Increase overall number of trainers trained ..... Increase the number of mine operators and miners trained. Provide quality training with clearly stated goals and objectives for improving safety.	Number of trainers trained. Number of mine operators and miners trained. Number trained as responsible persons. Number of persons trained in smoke. Number of training events. Number of course days of training provided to industry.
2. Agency creates and distributes training materials to provide more effective training to ensure workplaces are safe and healthy.	Increase the number of quality educational materials developed. Provide quality training materials with clearly stated goals and objectives for improving safety. Develop training materials that are reproducible or adaptable.	Evaluation of training materials created, to include target audience, goals and objectives, and usability in the mine training environment.

The technical proposal narrative is not to exceed 12 single-sided, double-spaced pages, using 12-point font, and must contain the following sections: Program Design, Overall Qualifications of the Applicant, and Output and Evaluation. Any pages over the 12-page limit will not be reviewed. Attachments to the technical proposal are not counted toward the 12-page limit. Major sections and sub-sections of the proposal should be divided and clearly identified. As required in Section VI subpart I ''Transparency,'' a grantee's final technical proposal will be posted ''as is'' on MSHA's Web site unless MSHA receives a version redacting any proprietary, confidential business, or personally identifiable information no later than two weeks after receipt of the Notice of Award.

MSHA will review and rate the technical proposal in accordance with the selection criteria specified in Part V.

(a) Program Design

(1) Statement of the Problem/Need for Funds. Applicants must identify a clear and specific need for proposed activities. They must identify whether they are providing a training program or creating training materials or both. Applicants also must identify the number of individuals expected to benefit from their training and education program; this should include identifying the type of underground mines, the geographic locations, and the number of mine operators and miners. Applicants must also identify other Federal funds they receive for similar activities.

(2) Quality of the Project Design:

MSHA requires that each applicant include a 12-month workplan that correlates with the grant project period that will begin no later than September 30, 2014 and end no later than September 29, 2015.

(i) Plan Overview:

Describe the plan for grant activities and the anticipated results. The plan should describe such things as the development of training materials, the training content, recruiting of trainees, where or how training will take place, and the anticipated benefits to mine operators and miners receiving the training.

(ii) Activities:

Break the plan down into activities or tasks. For each activity, explain what will be done, who will do it, when it will be done, and the anticipated results of the activity. For training, discuss the subjects to be taught, the length of the training sessions, type of training (e.g., Mine Emergency Response Development exercise), and training locations (e.g., classroom, worksites). Describe how the applicant will recruit mine operators and miners for the training. (Note: Any commercially developed training materials the applicant proposes to use in its training must undergo an MSHA review before being used.)

(iii) Quarterly Projections:

For training and other quantifiable activities, estimate the quantities involved using the table located in Part IV.B.3 for data required to meet the grant goals. For example, estimate how many classes will be conducted and how many mine operators and miners will be trained each quarter of the grant (grant quarters match calendar quarters, i.e., January to March, April to June, July to September, and October to December); except the first quarter is the date of award to the end of that calendar quarter). Also, provide the training number totals for the full year. Quarterly projections are used to measure the actual performance against the plan. Applicants planning to conduct a train-the-trainer program should estimate the number of individuals to be trained during the grant period by those who received the train-the-trainer training. These second-tier training numbers should be included only if the organization is planning to follow up with the trainers to obtain this data during the grant period.

(iv) Materials:

Describe each educational material to be produced under this grant. Provide a timetable for developing and producing the material. The timetable must include provisions for an MSHA review of draft and camera-ready products or evaluation of equipment. MSHA must review and approve training materials or equipment for technical accuracy and suitability of content before use in the grant program. Whether or not an applicant's project is to develop training materials only, the applicant should provide an overall plan that includes time for MSHA to review any materials produced.

(b) Qualifications of the Applicant

(1) Applicant's Background:

Describe the applicant, including its mission, and a description of its membership, if any. Provide an organizational chart (the chart may be included as a separate page which will not count toward the page limit). Identify the following:

(i) Project Director:

The Project Director is the person who will be responsible for the day-to-day operation and administration of the program. Provide the name, title, street address and mailing address (if it is different from the organization's street address), telephone and fax numbers, and email address of the Project Director.

(ii) Certifying Representative:

The Certifying Representative is the official in the organization who is authorized to enter into grant agreements. Provide the name, title, street address and mailing address (if it is different from the organization's street address), telephone and fax numbers, and email address of the Certifying Representative.

(2) Administrative and Program Capability:

Briefly describe the organization's functions and activities, i.e., the applicant's management and internal controls. Relate this description of functions to the organizational chart. If the applicant has received any other government (Federal, State or local) grant funding, the application must have, as an attachment (which will not count towards the page limit), information regarding these previous grants. This information must include each organization for which the work was done and the dollar value of each grant. If the applicant does not have previous grant experience, it may partner with an organization that has grant experience to manage the grant. If the organization uses this approach, the management organization must be identified and its grant program experience discussed. Lack of past experience with Federal grants is not a determining factor, but an applicant should show a successful experience relevant to the opportunity offered in the application. Such experience could include staff members' experiences with other organizations.

(3) Program Experience:

Describe the organization's experience conducting the proposed mine training program or other relevant experience. Include program specifics such as program title, numbers trained, and duration of training. If creating training materials, include the title of other materials developed. Nonprofit organizations, including community-based and faith-based organizations that do not have prior experience in mine safety may partner with an established mine safety organization to acquire safety expertise.

(4) Staff Experience:

Describe the qualifications of the professional staff you will assign to the program. Attach resumes of staff already employed (resumes will not count towards the page limit). If some positions are vacant, include position descriptions and minimum hiring qualifications instead of resumes. Staff should have, at a minimum, mine safety experience, training experience, or experience working with the mining community.

(c) Outputs and Evaluations:

There are two types of evaluations that must be conducted. First, describe the methods, approaches, or plans to evaluate the training sessions or training materials to meet the data requirements listed in the table above. Second, describe plans to assess the long-term effectiveness of the training materials or training conducted. The type of training given will determine whether the evaluation should include a process-related outcome or a result-related outcome or both. This will involve following up with an evaluation, or on-site review, if feasible, of miners trained. The evaluation should focus on what changes the trained miners made to abate hazards and improve workplace conditions, or to incorporate this training in the workplace, or both.

For training materials, include an evaluation from individuals trained on the clarity of the presentation, organization, and the quality of the information provided on the subject matter and whether they would continue to use the training materials. Include timetables for follow-up and for submitting a summary of the assessment results to MSHA.

C. Submission Date, Times, and Addresses

The closing date for receipt of applications under this announcement is June 30, 2014 (no later than 11:59 p.m. EDST). Grant applications must be submitted electronically through the Grants.gov Web site. The Grants.gov site provides all the information about submitting an application electronically through the site as well as the hours of operation. Interested parties can locate the downloadable application package by the CFDA No. 17.603.

Applications received by Grants.gov are date and time stamped electronically. Once an interested party has submitted an application, Grants.gov will notify the interested party with two emails: the first is an automatic notification of receipt and the second is that the application is validated and ready to be sent to the grantor agency or rejected because of errors. An application must be fully uploaded and validated by the Grants.gov system before the application deadline date. The DOL E-Grants system then receives the application from Grants.gov, and a third notification is sent to the interested party.

D. Intergovernmental Review

The Brookwood-Sago grants are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.'' MSHA however, reminds applicants that if they are not operating MSHA-approved State training grants, they should contact the State grantees and coordinate any training or educational program. Information about each state grant and the entity operating the state grant is provided online at: *www.msha.gov/TRAINING/STATES/STATES.asp.*

E. Funding Restrictions

MSHA will determine whether costs are allowable under the applicable Federal cost principles and other conditions contained in the grant award.

1. Allowable Costs

Grant funds may be spent on conducting training and outreach, developing educational materials, recruiting activities to increase participants in the program, and on necessary expenses to support these activities. Allowable costs are determined by the applicable Federal cost principles identified in Part VI.B, which are attachments in the application package, or are located online at *www.msha.gov:* Select ''Educations & Training Resources'', click on ''Courses'', select ''Brookwood-Sago Mine Safety Grants''.

(a) If an applicant anticipates earning program income during the grant period, the application must include an estimate of the income that will be earned. Program income earned must be reported on a quarterly basis.

(b) Program income earned during the award period shall be retained by the recipient, added to funds committed to the award, and used for the purposes and under the conditions applicable to the use of the grant funds.

2. Unallowable Costs

Grant funds may not be used for the following activities under this grant program:

(a) Any activity inconsistent with the goals and objectives of this SGA.

(b) Training on topics that are not targeted under this SGA.

(c) Purchasing any equipment unless pre-approved and in writing by the MSHA grant officer.

(d) Indirect administrative costs that exceed 15% of the total grant budget.

(e) Any pre-award costs.

Unallowable costs also include any cost determined by MSHA as not allowed according to the applicable cost principles or other conditions in the grant.

V. Application Review Information for FY 2014 Grants

A. Evaluation Criteria

MSHA will screen all applications to determine whether all required proposal elements are present and clearly identifiable. Those that do not comply with mandatory requirements will not be evaluated. The technical panels will review grant applications using the following criteria:

1. Program Design—40 Points Total

(a) Statement of the Problem/Need for Funds (3 Points)

The proposed training and education program or training materials must address either mine emergency preparedness or mine emergency prevention.

(b) Quality of the Project Design (25 Points)

(1) The proposal to train mine operators and miners clearly estimates the number to be trained and clearly identifies the types of mine operators and miners to be trained.

(2) If the proposal contains a train-the-trainer program, the following information must be provided:

- What ongoing support the grantee will provide to new trainers.
- The number of individuals to be trained as trainers.
- The estimated number of courses to be conducted by the new trainers.
- The estimated number of students to be trained by these new trainers and a description of how the grantee will obtain data from the new trainers documenting their classes and student numbers if conducted during the grant period.

(3) The work plan activities and training are described.

- The planned activities and training are tailored to the needs and levels of the mine operators and miners to be trained. Any special constituency to be served through the grant program is described, e.g., smaller mines, limited English proficiency miners, etc. Organizations proposing to develop materials in languages other than English also will be required to provide an English version of the materials.
- If the proposal includes developing training materials, the work plan must include time during development for MSHA to review the educational materials for technical accuracy and suitability of content. If commercially developed training products will be used for a training program, applicants should also plan for MSHA to review the materials before using the products in their grant programs.
- The utility of the educational materials is described.
- The outreach or process to find mine operators, miners, or trainees to receive the training is described.

(c) Replication (4 Points)

The potential for a project to serve a variety of mine operators, miners, or mine sites, or the extent others may replicate the project.

(d) Innovativeness (3 Points)

The originality and uniqueness of the approach used.

(e) MSHA's Performance Goals (5 Points)

The extent the proposed project will contribute to MSHA's performance goals.

2. Budget—20 Points Total

(a) The Budget Presentation is Clear and Detailed (15 Points)

- The budgeted costs are reasonable.
- No more than 15% of the total budget is for administrative costs.
- The budget complies with Federal cost principles (which can be found in the applicable Office of Management and Budget (OMB) Circulars and with MSHA budget requirements contained in the grant application instructions).

(b) The Application Demonstrates That the Applicant Has Strong Financial Management and Internal Control Systems (5 Points)

3. Overall Qualifications of the Applicant—25 Points Total

(a) Grant Experience (6 Points)

The applicant has administered, or will work with an organization that has administered, a number of different Federal or State grants. The applicant may demonstrate this experience by having project staff that has experience administering Federal or State grants.

(b) Mine Safety Training Experience (13 Points)

- The applicant applying for the grant demonstrates experience with mine safety teaching or providing mine safety educational programs. Applicants that do not have prior experience in providing mine safety training to mine operators or miners may partner with an established mine safety organization to acquire mine safety expertise.
- Project staff has experience in mine safety, the specific topic chosen, or in training mine operators and miners.
- Project staff has experience in recruiting, training, and working with the population the organization proposes to serve.
- Applicant has experience in designing and developing mine safety training materials for a mining program.
- Applicant has experience in managing educational programs.

(c) Management (6 Points)

Applicant demonstrates internal control and management oversight of the project.

4. Outputs and Evaluations—15 Points Total

The proposal should include provisions for evaluating the organization's progress in accomplishing the grant work activities and accomplishments, evaluating training sessions, and evaluating the program's effectiveness and impact to determine if the safety training and services provided resulted in workplace change or improved workplace conditions. The proposal should include a plan to follow up with trainees to determine the impact the program has had in abating hazards and reducing miner illnesses and injuries.

B. Review and Selection Process for FY 2014 Grants

A technical panel will rate each complete application against the criteria described in this SGA. One or more applicants may be selected as grantees on the basis of the initial application submission or a minimally acceptable number of points may be established. MSHA may request final revisions to the applications, and then evaluate the revised applications. MSHA may consider any information that comes to its attention in evaluating the applications.

The panel recommendations are advisory in nature. The Deputy Assistant Secretary for Operations for Mine Safety and Health will make a final selection determination based on what is most advantageous to the government, considering factors such as panel findings, geographic presence of the applicants or the areas to be served, Agency priorities, and the best value to the government, cost, and other factors. The Deputy Assistant Secretary's determination for award under this SGA is final.

C. Anticipated Announcement and Award Dates

Announcement of these awards is expected to occur before September 30, 2014. The grant agreement will be signed no later than September 30, 2014.

VI. Award Administration Information

A. Award Process

Before September 29, 2014, organizations selected as potential grant recipients will be notified by a representative of the Deputy Assistant Secretary. An applicant whose proposal is not selected will be notified in writing. The fact that an organization has been selected as a potential grant recipient does not necessarily constitute

approval of the grant application as submitted (revisions may be required).

Before the actual grant award and the announcement of the award, MSHA may enter into negotiations with the potential grant recipient concerning such matters as program components, staffing and funding levels, and administrative systems. If the negotiations do not result in an acceptable submittal, the Deputy Assistant Secretary reserves the right to terminate the negotiations and decline to fund the proposal.

B. Administrative and National Policy Requirements

All grantees will be subject to applicable Federal laws and regulations (including provisions of appropriations law) and applicable OMB Circulars. These requirements are attachments in the application package or are located online at *www.msha.gov:* Select ''Education & Training Resources'', click on ''Courses'', select ''Brookwood-Sago Mine Safety Grants''. The grants awarded under this competitive grant program will be subject to the following administrative standards and provisions, if applicable:

- 2 CFR part 25, Universal Identifier and Central Contractor Registration
- 2 CFR part 170, Reporting Subawards and Executive Compensation Information
- 2 CFR part 175, Award Term for Trafficking in Persons
- 2 CFR part 220, Cost Principles for Educational Institutions (OMB Circular A–21)
- 2 CFR part 225, Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A–87)
- 2 CFR part 230, Cost Principles for Non-profit Organizations (OMB Circular A–122)
- 29 CFR part 2, Subpart D, Equal Treatment in Department of Labor Programs for Religious Organizations, Protection of Religious Liberty of Department of Labor Social Service Providers and Beneficiaries
- 29 CFR part 31, Nondiscrimination in federally assisted programs of the Department of Labor—Effectuation of Title VI of the Civil Rights Act of 1964
- 29 CFR part 32, Nondiscrimination on the basis of handicap in programs or activities receiving federal financial assistance
- 29 CFR part 33, Enforcement of non-discrimination on the basis of handicap in programs or activities conducted by the Department of Labor
- 29 CFR part 35, Nondiscrimination on the basis of age in programs or activities receiving federal financial assistance from the Department of Labor
- 29 CFR part 36, Nondiscrimination on the basis of sex in education programs or activities receiving federal financial assistance
- 29 CFR part 93, New restrictions on lobbying
- 29 CFR part 94, Governmentwide requirements for drug-free workplace (financial assistance)
- 29 CFR part 95, Grants and agreements with institutions of higher education, hospitals, and other non-profit organizations, and with commercial organizations, foreign governments, organizations under the jurisdiction of foreign governments, and international organizations
- 29 CFR part 96, Audit requirements for grants, contracts, and other agreements
- 29 CFR part 97, Uniform administrative requirements for grants and cooperative agreements to state and local governments
- 29 CFR part 98, Governmentwide debarment and suspension (nonprocurement)
- 29 CFR Part 99, Audits of states, local governments, and non-profit organizations
- Federal Acquisition Regulation (FAR) Part 31, Subpart 31.2, Contracts cost principles and procedures (Codified at 48 CFR Subpart 31.2)

Indirect administrative costs for these grants may not exceed 15%. Unless specifically approved, MSHA's acceptance of a proposal or MSHA's award of Federal funds to sponsor any program does not constitute a waiver of any grant requirement or procedure. For example, if an application identifies a specific sub-contractor to provide certain services, the MSHA award does not provide a basis to sole-source the procurement (to avoid competition).

C. Special Program Requirements

1. MSHA Review of Educational Materials

MSHA will review all grantee-produced educational and training materials for technical accuracy and suitability of content during development and before final publication. MSHA also will review training curricula and purchased training materials for technical accuracy and suitability of content before the materials are used. Grantees developing training materials must follow all copyright laws and provide written certification that their materials are free from copyright infringement.

When grantees produce training materials, they must provide copies of completed materials to MSHA before the end of the grant period. Completed materials should be submitted to MSHA in hard copy and in digital format for publication on the MSHA Web site. Two copies of the materials must be provided to MSHA. Acceptable formats for training materials include Microsoft XP Word, PDF, PowerPoint, and any other format agreed upon by MSHA.

2. License

As listed in 29 CFR 95.36, the Department of Labor reserves a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use for Federal purposes any work produced under a grant, and to authorize others to do so. Grantees must agree to provide the Department of Labor a paid-up, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use for Federal purposes all products developed, or for which ownership was purchased, under an award. Such products include, but are not limited to, curricula, training models, and any related materials. Such uses include, but are not limited to, the right to modify and distribute such products worldwide by any means, electronic, or otherwise. Title 29 CFR 97.34 provides DOL and MSHA with similar rights for any work produced or purchased under the grant.

3. Acknowledgement on Printed Materials

All approved grant-funded materials developed by a grantee shall contain the following disclaimer: ''This material was produced under grant number XXXXX from the Mine Safety and Health Administration, U.S. Department of Labor. It does not necessarily reflect the views or policies of the U.S. Department of Labor, nor does mention of trade names, commercial products, or organizations imply endorsement by the U.S. Government.''

When issuing statements, press releases, request for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, all grantees receiving Federal funds must clearly state:

(a) The percentage of the total costs of the program or project that will be financed with Federal money.

(b) The dollar amount of Federal financial assistance for the project or program.

(c) The percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

4. Use of DOL and MSHA Logos

The DOL or the MSHA logo may be applied to the grant-funded material including posters, videos, pamphlets, research documents, national survey results, impact evaluations, best practice reports, and other publications. The grantees must consult with MSHA on whether the logo may be used on any such items prior to final draft or final preparation for distribution. In no event shall the DOL or the MSHA logo be placed on any item until MSHA has given the grantee written permission to use either logo on the item.

5. Reporting

Grantees are required by Departmental regulations to submit financial and project reports, as described below, each quarter (grant quarters match calendar quarters, i.e., January to March, April to June).

(a) Financial Reports

All financial reports are due no later than 30 days after the end of the quarter and shall be submitted to MSHA electronically. Grantees will be contacted with instructions on how to submit reports.

(b) Technical Project Reports

After signing the agreement, the grantee shall submit technical project reports to MSHA no later than 30 days after the end of each quarter. Technical project reports provide both quantitative and qualitative information and a narrative assessment of performance for the preceding three-month period. See 29 CFR 95.51 and 29 CFR 97.40. This should include the current grant progress against the overall grant goals as provided in Part IV.B.3.

Between reporting dates, the grantee shall immediately inform MSHA of significant developments or problems affecting the organization's ability to accomplish the work. See 29 CFR 95.51(f) and 29 CFR 97.40(d).

(c) Final Reports

At the end of the grant period, each grantee must provide a project summary of its technical project reports, an evaluation report, and a close-out financial report. These final reports are due no later than 90 days after the end of the 12-month performance period.

H. Freedom of Information

Any information submitted in response to this SGA will be subject to the provisions of the Freedom of Information Act, as appropriate.

I. Transparency in the Grant Process

DOL is committed to conducting a transparent grant award process and publicizing information about program outcomes. Posting awardees' grant applications on public Web sites is a means of promoting and sharing innovative ideas. Under this SGA, DOL will publish the awardees' Executive Summaries, selected information from their SF–424s, and a version of awardees' Technical Proposals on the Department's Web site or similar location. None of the Attachments to the Technical Proposal provided with the applications will be published. The Technical Proposals and Executive Summaries will not be published until after the grants are awarded. In addition, information about grant progress and results may also be made publicly available.

DOL recognizes that grant applications sometimes contain information that an applicant may consider proprietary or business confidential information, or may contain personally identifiable information. Proprietary or business confidential information is information that is not usually disclosed outside your organization and disclosing this information is likely to cause you substantial competitive harm.

Personally identifiable information is any information that can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information.[1]

Executive Summaries will be published in the form originally submitted, without any redactions. Applicants should not include any proprietary or confidential business information or personally identifiable information in this summary. In the event that an applicant submits proprietary or confidential business information or personally identifiable information in the summary, DOL is not liable for the posting of this information contained in the Executive Summary. The submission of the grant application constitutes a waiver of the applicant's objection to the posting of any proprietary or confidential business information contained in the Executive Summary. Additionally, the applicant is responsible for obtaining all authorizations from relevant parties for publishing all personally identifiable information contained within the Executive Summary. In the event the Executive Summary contains proprietary or confidential business or personally identifiable information, the applicant is presumed to have obtained all necessary authorizations to provide this information and may be liable for any improper release of this information.

By submission of this grant application, the applicant agrees to indemnify and hold harmless the United States, the U.S. Department of Labor, its officers, employees, and agents against any liability or for any loss or damages arising from this application. By such submission of this grant application, the applicant further acknowledges having the authority to execute this release of liability.

In order to ensure that proprietary or confidential business information or personally identifiable information is properly protected from disclosure when DOL posts the selected Technical Proposals, applicants whose Technical Proposals will be posted will be asked to submit a second redacted version of their Technical Proposal, with any proprietary or confidential business information and personally identifiable information redacted. All non-public information about the applicant's staff or other individuals should be removed as well.

The Department will contact the applicants whose Technical Proposals will be published by letter or email, and provide further directions about how and when to submit the redacted version of the Technical Proposal.

Submission of a redacted version of the Technical Proposal will constitute permission by the applicant for DOL to make the redacted version publicly available. We will also assume that the applicant has obtained the agreement to the redacted version of the applicant's Technical Proposal. If an applicant fails to provide a redacted version of the Technical Proposal within two weeks after receipt of Notice of Award, DOL will publish the original Technical Proposal in full, after redacting only personally identifiable information. (Note that the original, unredacted version of the Technical Proposal will remain part of the complete application package, including an applicant's proprietary and confidential business information and any personally identifiable information.)

Applicants are encouraged to disclose as much of the grant application information as possible, and to redact

[1] OMB Memorandum 07–16 and 06–19. GAO Report 08–536, *Privacy: Alternatives Exist for Enhancing Protection of Personally Identifiable Information,* May 2008, *www.gao.gov/assets/280/275558.pdf.*

only information that clearly is proprietary, confidential commercial/business information, or capable of identifying a person. The redaction of entire pages or sections of the Technical Proposal is not appropriate, and will not be allowed, unless the entire portion merits such protection. Should a dispute arise about whether redactions are appropriate, DOL will follow the procedures outlined in the Department's Freedom of Information Act (FOIA) regulations (29 CFR part 70).

Redacted information in grant applications will be protected by DOL from public disclosure in accordance with federal law, including the Trade Secrets Act (18 U.S.C.1905), FOIA, and the Privacy Act (5 U.S.C. 552a). If DOL receives a FOIA request for your application, the procedures in DOL's FOIA regulations for responding to requests for commercial/business information submitted to the government will be followed, as well as all FOIA exemptions and procedures, 29 CFR 70.26. Consequently, it is possible that application of FOIA rules may result in release of information in response to a FOIA request that an applicant redacted in its ''redacted copy.''

VII. Agency Contacts

Any questions regarding this Solicitation for Grant Applications (SGA 14–3BS) should be directed to Janice Oates at *Oates.Janice@dol.gov* or 202–693–9570 (this is not a toll-free number) or Teresa Rivera at *Rivera.Teresa@dol.gov* or 202–693–9581 (this is not a toll-free number). MSHA's Web page at *www.msha.gov* is a valuable source of background for this initiative.

VIII. Office of Management and Budget Information Collection Requirements

This SGA requests information from applicants. This collection of information is approved under OMB Control No. 1225–0086 (expires January 31, 2016).

Except as otherwise noted, in accordance with the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless such collection displays a valid OMB control number. Public reporting burden for the grant application is estimated to average 20 hours per response, for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Each recipient who receives a grant award notice will be required to submit nine progress reports to MSHA. MSHA estimates that each report will take approximately two and one-half hours to prepare.

Send comments regarding the burden estimated or any other aspect of this collection of information, including suggestions for reducing this burden, to the OMB Desk Officer for MSHA, Office of Management and Budget Room 10235, Washington DC 20503 and MSHA, electronically to Janice Oates at *Oates.Janice@dol.gov* or Teresa Rivera at *Rivera.Teresa@dol.gov* or by mail to Janice Oates, Room 2101, 1100 Wilson Boulevard, Arlington, Virginia 22209.

This information is being collected for the purpose of awarding a grant. The information collected through this ''Solicitation for Grant Applications'' will be used by the Department of Labor to ensure that grants are awarded to the applicant best suited to perform the functions of the grant. Submission of this information is required in order for the applicant to be considered for award of this grant.

Dated: May 2, 2014.

Patricia W. Silvey,

Deputy Assistant Secretary for Operations, Mine Safety and Health.

[FR Doc. 2014–10532 Filed 5–7–14; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL LABOR RELATIONS BOARD

Sunshine Act Meetings: May 2014

TIME AND DATES: All meetings are held at 2:00 p.m.

Thursday, May 1;
Tuesday, May 6;
Wednesday, May 7;
Thursday, May 8;
Tuesday, May 13;
Wednesday, May 14;
Thursday, May 15;
Tuesday, May 20;
Wednesday, May 21;
Thursday, May 22;
Tuesday, May 27;
Wednesday, May 28;
Thursday, May 29.

PLACE: Board Agenda Room, No. 11820, 1099 14th St. NW., Washington, DC 20570.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Pursuant to § 102.139(a) of the Board's Rules and Regulations, the Board or a panel thereof will consider ''the issuance of a subpoena, the Board's participation in a civil action or proceeding or an arbitration, or the initiation, conduct, or disposition . . . of particular representation or unfair labor practice proceedings under section 8, 9, or 10 of the [National Labor Relations] Act, or any court proceedings collateral or ancillary thereto.'' See also 5 U.S.C. 552b(c)(10).

CONTACT PERSON FOR MORE INFORMATION: Henry Breiteneicher, Associate Executive Secretary, (202) 273–2917.

Dated: May 5, 2014.

William B. Cowen,

Solicitor.

[FR Doc. 2014–10675 Filed 5–6–14; 4:15 pm]

BILLING CODE 7545–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Astronomy and Astrophysics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Astronomy and Astrophysics Advisory Committee (#13883).

Date and Time: June 10, 2014 12:00 p.m.–4:00 p.m. EDT—Teleconference.

Place: National Science Foundation, Room 1060, Stafford I Building, 4201 Wilson Blvd., Arlington, VA, 22230.

Type of Meeting: Open.

Contact Person: Dr. James Ulvestad, Division Director, Division of Astronomical Sciences, Suite 1045, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: 703–292–7165.

Purpose of Meeting: To provide advice and recommendations to the National Science Foundation (NSF), the National Aeronautics and Space Administration (NASA) and the U.S. Department of Energy (DOE) on issues within the field of astronomy and astrophysics that are of mutual interest and concern to the agencies.

Agenda: To hear presentations of current programming byrepresentatives from NSF, NASA, DOE and other agencies relevant to astronomy and astrophysics; to discuss current and potential areas of cooperation between the agencies; to formulate recommendations for continued and new areas of cooperation and mechanisms for achieving them.

Dated: May 5, 2014.

Suzanne Plimpton,

Acting Committee Management Officer.

[FR Doc. 2014–10552 Filed 5–7–14; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2014–0071]

Tornado Missile Protection

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft interim staff guidance; request for extension of comment period.

SUMMARY: On April 4, 2014, the U.S. Nuclear Regulatory Commission (NRC) published a request for public comment on a draft regulatory issue summary (RIS) that restates regulatory requirements and staff positions on protection from tornado missiles. The public comment period was originally scheduled to close on June 3, 2014. The NRC has decided to extend the public comment period on this document to allow more time for members of the public to develop and submit their comments.

DATES: Comments must be filed no later than June 18, 2014. Comments received after this date will be considered, if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0071. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: 3WFN–06–44M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Todd Keene, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–287–1994, email: *todd.keene@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2014–0071 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this action by the following methods:

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0071.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The draft RIS, ''Tornado Missile Protection,'' is available in ADAMS under Accession No. ML13094A421.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2014–0071 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in you comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Further Information

On April 4, 2014 (79 FR 18933), the NRC published a request for public comment on a draft regulatory issue summary (RIS) that restates regulatory requirements and staff positions on protection from tornado missiles.

The public comment period was originally scheduled to close on June 3, 2014. The NRC has decided to extend the public comment period on this document to allow more time for stakeholders to use information from the public meeting to develop their comments. The deadline for submitting comments will be extended to June 18, 2014.

Dated at Rockville, Maryland, this 30th day of April, 2014.

For the Nuclear Regulatory Commission.

Sheldon Stuchell,

Acting Branch Chief, Generic Communications Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. 2014–10586 Filed 5–7–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–368; NRC–2014–0106]

Entergy Operations, Inc.; Arkansas Nuclear One, Unit 2

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; withdrawal by applicant.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has granted the request of Entergy Operations, Inc., to withdraw its application dated April 4, 2012, for a proposed amendment to Renewed Facility Operating License No. NPF–6 for Arkansas Nuclear One (ANO), Unit 2. The proposed amendment would have changed the facility technical specifications to implement four Technical Specification Task Force (TSTF) travelers related to a revised fuel handling accident (FHA) analysis.

ADDRESSES: Please refer to Docket ID NRC–2014–0106 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this document using any of the following methods:

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0106. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select

''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Peter Bamford, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2833, email: *Peter.Bamford@nrc.gov.*

SUPPLEMENTARY INFORMATION: The NRC has granted the request of Entergy Operations, Inc. (the licensee), to withdraw its April 4, 2012, application (ADAMS Accession No. ML12096A022), proposing an amendment to Renewed Facility Operating License No. NPF–6 for ANO, Unit 2, located in Russellville, Arkansas.

The proposed amendment incorporates the ANO, Unit 2, revised FHA based on the use of the Alternate Source Term (AST) methodology. This methodology was previously approved for use at ANO, Unit 2, as documented in an NRC safety evaluation dated April 26, 2011 (ADAMS Accession No. ML110980197). The original FHA analysis assumed failure of 60 fuel rods in a single fuel assembly. The revised analysis assumes the failure of all fuel rods in two fuel assemblies (472 rods). The changes necessary to support the revised FHA affect similar Technical Specifications (TSs) associated with the following NRC-approved TSTF Travelers: TSTF–51, Revision 2, ''Revise Containment Requirements During Handling Irradiated Fuel and Core Alterations''; TSTF–272, Revision 1, ''Refueling Boron Concentration Clarification''; TSTF–268, Revision 2, ''Operations Involving Positive Reactivity Additions''; and TSTF–471, Revision 1, ''Eliminate use of Term Core Alterations in Actions and Notes.'' Therefore, the licensee proposed to adopt these TSTFs in conjunction with changes that reflect the revised FHA. Additionally, administrative and/or editorial errors noted on the affected TS pages were also proposed for correction.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on July 10, 2012 (77 FR 40652). However, by letter dated April 23, 2014 (ADAMS Accession No. ML14113A604), the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated April 4, 2012, and supplements dated July 9, 2012, June 18, 2013, and July 1, 2013 (ADAMS Accession Nos. ML12192A089, ML13170A197, and ML13183A124, respectively).

Dated at Rockville, Maryland, this 30th day of April 2014.

For the Nuclear Regulatory Commission.

Peter Bamford,

Project Manager, Plant Licensing Branch IV–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2014–10587 Filed 5–7–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[IA–13–064; NRC–2014–0103]

In the Matter of Daniel Wilson

AGENCY: Nuclear Regulatory Commission.

ACTION: Order; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an order prohibiting Mr. Wilson from involvement in NRC-licensed activities for a period of 1 year. The order also requires Mr. Wilson to notify the NRC of any current involvement in NRC-licensed activities, to immediately cease those activities, and to notify the NRC of the name, address, and telephone number of the employer.

DATES: *Effective Date:* See attachment.

ADDRESSES: Please refer to Docket ID NRC–2014–0103 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this action by the following methods:

• *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0103. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.*

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Robert G. Carpenter, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1330, email: *Robert.Carpenter@nrc.gov.*

SUPPLEMENTARY INFORMATION: The text of the Order is attached.

Dated at Rockville, Maryland, this 29th day of April 2014.

For the Nuclear Regulatory Commission.

Roy P. Zimmerman,

Director, Office of Enforcement.

Order Prohibiting Involvement in NRC-Licensed Activities

I

Daniel Wilson (Mr. Wilson) was formally employed as the Chemistry Manager at the Entergy Nuclear Operations (ENO) Indian Point Energy Center (Licensee). ENO holds License Nos. DPR–26 and DPR–64 issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to Part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR) on September 28, 1973 and December 12, 1975, respectively. The licenses authorize the operation of Indian Point Nuclear Generating Units 2 and 3 in accordance with the conditions specified therein. The facility is located on the Licensee's site in Buchanan, New York.

II

Between March 30, 2012, and March 26, 2013, an investigation was conducted at IP to determine if Mr. Wilson, while employed as the IP Chemistry Manager, deliberately entered false data into a Chemistry database pertaining to an emergency diesel generator (EDG) fuel oil storage tank (FOST) and the reserve fuel oil storage tank (RFOST). Per the IP Technical Specifications (TS), the fuel oil is sampled nominally every 92 days and analyzed to determine if it is within limits for specified parameters, including total particulate concentration. If the particulate concentration is above the stated limit, it must be restored to below the limit within seven days for an FOST, or 30

days for the RFOST; otherwise, ENO must immediately declare the associated EDGs inoperable. For the RFOST, all the EDGs would be declared inoperable, which would require ENO to shutdown both operating units.

During a self-assessment conducted in January/February 2012 to prepare for an upcoming NRC Component Design Bases Inspection, ENO staff at IP reviewed the EDG fuel oil delivery systems and storage tanks. The IP self-assessment team identified that: (1) Results of RFOST samples taken on June 17, 2011, and December 1, 2011, were not entered into the Chemistry Department database until July 14, 2011, and January 23, 2012, respectively; and (2) although both samples exceeded the TS particulate limits, no condition reports (CRs) had been written to document the issues and notify site operations and, evidently, no re-sampling performed to confirm that the oil had been restored to below the limit within the 30-day allowed outage time.

On February 2, 2012, the IP self-assessment team inquired of Chemistry department staff, including Mr. Wilson, about this issue. Subsequently, on February 5, 2012, Mr. Wilson entered information in the Chemistry database indicating that re-samples for the June 17, 2011, and December 1, 2011, RFOST samples had, in fact, been performed on June 29, 2011, and December 9, 2011, respectively (i.e., within the 30 day period allowed by TS), and that the re-samples were below the TS particulate limit. However, during the OI investigation, Mr. Wilson admitted to OI that the re-samples had actually not been obtained. Mr. Wilson informed OI that he had entered false values in the database instead of documenting the issue in a CR or otherwise informing the IP Operations Department that the site was operating in violation of its TS. Mr. Wilson also admitted that he similarly entered false re-sample data for the IP 22 EDG FOST after identifying that the TS particulate limit had been exceeded for a November 18, 2011, sample taken from that tank. Namely, on February 6, 2012, Mr. Wilson entered data to indicate that a resample had been performed on December 7, 2011, and that the resample was below the TS particulate limit.

During the investigation, Mr. Wilson testified to OI that he entered the false values because he believed the original sample results were incorrect as a result of poor IP Chemistry Department sampling practices. Namely, the samples had been obtained from the bottom of the RFOST and shipped in a tin-coated can; both practices that were specifically not recommended by newer industry guidance because sediment could collect at the bottom of the tank and the tin coating could contaminate the samples. Mr. Wilson said that he did not report the out-of-specification results because he wanted more time to prove his theory and incorporate new test methods, and he did not want the plant to shut down when he did not believe it really needed to do so.

Based on the OI investigation, the NRC determined that Mr. Wilson committed multiple apparent violations (AVs), pursuant to 10 CFR 50.5, in that he deliberately: (a) Caused ENO to remain in violation of the TS Limiting Condition for Operation for the RFOST and 22 FOST for longer than it would have had Mr. Wilson taken the appropriate action of informing IP Operations; and, (b) provided to ENO incomplete and inaccurate information that was material to the NRC by entering false data into the chemistry database and/or related condition reports to indicate that the RFOST and the 22 FOST had been resampled, and the results had been within TS limits when, in fact, resamples had not been taken.

In a letter dated December 18, 2013, the NRC described the AV and informed Mr. Wilson that the NRC was considering escalated enforcement action against him. In the letter, we also offered Mr. Wilson the opportunity to discuss the AV during a pre-decisional enforcement conference (PEC) or to engage the NRC in an alternative dispute resolution (ADR) mediation session or to provide a written response before we made our enforcement decision.

In a December 27, 2013, telephone call with the NRC Acting Deputy Assistant General Counsel, Mr. Wilson's attorney informed the NRC that he neither required a PEC or an ADR mediation session, nor intended to submit a written response, but that Mr. Wilson was willing to cooperate with the NRC.

III

Based on the above, the NRC has concluded that Daniel Wilson, a former employee of the Licensee, engaged in deliberate misconduct that has: (1) Caused the Licensee to operate IP Units 2 and 3 in violation of their TS requirements for a longer period than if he had written a CR (or otherwise notified the IP Operations Department of the issue); and (2) prevented ENO from informing the NRC of this TS-prohibited condition, in violation of 10 CFR 50.73.

NRC must be able to rely on the Licensee and its employees to comply with NRC requirements, including site TS, which establish limits for the safe operation of nuclear reactor facilities and actions to take when such limits are not met. Mr. Wilson's actions to independently interpret the validity of a TS limit and deliberately disregard the actions required for an exceeded TS limit have raised serious doubt as to whether he can be relied upon to comply with NRC requirements.

Consequently, I lack the reasonable assurance that licensed activities can be conducted in compliance with Commission requirements and that the health and safety of the public will be protected, if Daniel Wilson were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health and safety, and the common defense and security of the nation require that Mr. Wilson be prohibited from any involvement in NRC-licensed activities for a period of one year from the date of this Order.

IV

Accordingly, pursuant to Sections 103, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, and 10 CFR 50.5. *It is hereby ordered that:*

1. Daniel Wilson is prohibited for one year from the date of this Order from engaging in, supervising, directing, or in any other way conducting NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted in the NRC's jurisdiction pursuant to the authority granted by 10 CFR 150.20.

2. If Daniel Wilson is currently involved with another licensee in NRC-licensed activities, he must immediately cease those activities, and inform the NRC of the name, address, and telephone number of the employer, and provide a copy of this order to the employer.

The Director, Office of Enforcement, or designee, may, in writing, relax or rescind any of the above conditions upon demonstration by Daniel Wilson of good cause.

V

Any person adversely affected by this Order may submit a written answer to this Order within 30 days of issuance. In addition, Daniel Wilson and any other person adversely affected by this Order may request a hearing on this Order within 30 days of issuance. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing.

A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–001, and include a statement of good cause for the extension.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007, as amended by 77 FR 46562, August 3, 2012), codified in pertinent part at 10 CFR Part 2, Subpart C. The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below. To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at (301) 415–1677, to: (1) Request a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time (ET) on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, any others who wish to participate in the proceeding (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email at *MSHD.Resource@nrc.gov,* or by a toll-free call at (866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., ET, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket, which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, participants are requested not to include copyrighted materials in their submission, except for limited excerpts that serve the purpose of the adjudicatory filings and constitute a Fair Use application.

If a person other than Daniel Wilson requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing is requested by the recipient or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearings. If a hearing is held, the issue to be considered at such hearing shall be whether this Order

should be sustained. In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 30 days from the date this Order is issued without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

Dated at Rockville, Maryland, this 29th day of April 2014.

For the Nuclear Regulatory Commission.

Roy P. Zimmerman,
Director, Office of Enforcement.

[FR Doc. 2014–10582 Filed 5–7–14; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

Summary: In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Statement of Authority to Act for Employee; OMB 3220–0034.

Under Section 5(a) of the Railroad Unemployment Insurance Act (RUIA), claims for benefits are to be made in accordance with such regulations as the Railroad Retirement Board (RRB) shall prescribe. The provisions for claiming sickness benefits as provided by Section 2 of the RUIA are prescribed in 20 CFR 335.2. Included in these provisions is the RRB's acceptance of forms executed by someone else on behalf of an employee if the RRB is satisfied that the employee is sick or injured to the extent of being unable to sign forms.

The RRB utilizes Form SI–10, Statement of Authority to Act for Employee, to provide the means for an individual to apply for authority to act on behalf of an incapacitated employee and also to obtain the information necessary to determine that the delegation should be made. Part I of the form is completed by the applicant for the authority and Part II is completed by the employee's doctor. One response is requested of each respondent. Completion is required to obtain benefits. The RRB proposes no changes to Form SI–10.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

Form No.	Annual responses	Time (minutes)	Burden (hours)
SI–10	250	6	25

2. Title and purpose of information collection: Statement Regarding Contributions and Support; OMB 3220–0099.

Under Section 2 of the Railroad Retirement Act, dependency on an employee for one-half support at the time of the employee's death can affect (1) entitlement to a survivor annuity when the survivor is a parent of the deceased employee; (2) the amount of spouse and survivor annuities; and (3) the Tier II restored amount payable to a widow(er) whose annuity was reduced for receipt of an employee annuity, and who was dependent on the railroad employee in the year prior to the employee's death. One-half support may also negate the public service pension offset in Tier I for a spouse or widow(er). The Railroad Retirement Board (RRB) utilizes Form G–134, Statement Regarding Contributions and Support, to secure information needed to adequately determine if the applicant meets the one-half support requirement. One response is completed by each respondent. Completion is required to obtain benefits. The RRB proposes no changes to Form G–134.

Estimate of Annual Respondent Burden

The estimated annual respondent burden is as follows:

Form No.	Annual responses	Time (minutes)	Burden (hours)
G–134:			
With Assistance	75	147	184
Without assistance	25	180	75
Total	100		259

3. Title and purpose of information collection: Employee Non-Covered Service Pension Questionnaire; OMB 3220–0154.

Section 215(a)(7) of the Social Security Act provides for a reduction in social security benefits based on employment not covered under the Social Security Act or the Railroad Retirement Act (RRA). This provision applies a different social security benefit formula to most workers who are first eligible after 1985 to both a pension based in whole or in part on non-covered employment and a social security retirement or disability benefit. There is a guarantee provision that limits the reduction in the social security benefit to one-half of the portion of the pension based on non-covered employment after 1956. Section 8011 of Pub. L. 100–647 changed the effective date of the onset from the first month of eligibility to the first month of

concurrent entitlement to the non-covered service benefit and the RRA benefit.

Section 3(a)(1) of the RRA provides that the Tier I benefit of an employee annuity shall be equal to the amount (before any reduction for age or deduction for work) the employee would receive if entitled to a like benefit under the Social Security Act. The reduction for a non-covered service pension also applies to a Tier I portion of the employee annuity under the RRA when the annuity or non-covered service pension begins after 1985. Since the amount of a spouse's Tier I benefit is one-half of the employee's Tier I, the spouse annuity is also affected.

Form G–209, Employee Non-Covered Service Pension Questionnaire, is used by the RRB to obtain needed information (1) from a railroad employee who while completing Form AA–1, Application for Employee Annuity (OMB No. 3220–0002), indicates entitlement to or receipt of a pension based on employment not covered under the Railroad Retirement Act or the Social Security Act; or (2) from a railroad employee when an independently-entitled divorced spouse applicant believes the employee to be entitled to a non-covered service pension. However, this development is unnecessary if RRB records indicate the employee has 30 or more years of coverage; or (3) from an employee annuitant who becomes entitled to a pension based on employment not covered under the Railroad Retirement Act or the Social Security Act. One response is requested of each respondent. Completion is required to obtain or retain benefits. The RRB proposes no changes to Form G–209.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

Form No.	Annual responses	Time (minutes)	Burden (hours)
G–209 (Partial Questionnaire)	50	1	1
G–209 (Full Questionnaire)	100	8	13
Total	150		14

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, contact Dana Hickman at (312) 751–4981 or *Dana.Hickman@RRB.GOV.* Comments regarding the information collection should be addressed to Charles Mierzwa, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or emailed to *Charles.Mierzwa@RRB.GOV.* Written comments should be received within 60 days of this notice.

Charles Mierzwa,

Chief of Information Resources Management.

[FR Doc. 2014–10531 Filed 5–7–14; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72084; File No. SR–NYSEMKT–2014–42]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 980NY To Adopt Rules Governing an Opening Auction Process for Electronic Complex Orders and To Amend and Reorganize Existing Rules Specifying Available Electronic Complex Order Types and Modifiers

May 2, 2014.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on April 28, 2014, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 980NY (Electronic Complex Order Trading) to adopt rules governing an opening auction process for Electronic Complex Orders and to amend and reorganize existing rules specifying available Electronic Complex Order types and modifiers. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 980NY (Electronic Complex Order Trading) to adopt rules governing an opening auction process for Electronic Complex Orders and to amend and reorganize existing rules specifying order types and modifiers applicable to Electronic Complex Orders.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

Opening Auction Process for Electronic Complex Orders

The Exchange is proposing to amend Rule 980NY(c) by establishing subsection (i) to describe how orders would be handled by the Complex Matching Engine (''CME'') during a new opening auction process for Electronic Complex Orders that would allow the Exchange to offer eligible trading interest at a single-price opening. Currently, there is no single-price opening. Rather, the CME begins processing each Electronic Complex Order in the Consolidated Book based on price/time priority after all of the individual component option series that make up a complex order strategy have opened. By adopting the proposed opening auction process for the CME, the Exchange is seeking to maximize both price discovery and execution opportunities for participants utilizing Electronic Complex Orders. The Chicago Board Options Exchange (''CBOE'') recently adopted similar rules to describe how their Complex Order Book (''COB'') functions at the opening of trading.[4] The Exchange notes that the proposed changes to Rule 980NY regarding the new opening auction process for Electronic Complex Orders are substantially similar in all material respects to those of the CBOE.[5]

Pursuant to proposed Rule 980NY(c)(i)(A), Electronic Complex Orders would not participate in opening auctions for individual component option series legs conducted pursuant to Rule 952NY(b). The Exchange further proposes to provide that the CME would not begin processing Electronic Complex Orders until all of the individual component option series legs that make up a complex order strategy have opened. The intent of this paragraph is to make clear to market participants that an Electronic Complex Order is not eligible to trade until such time that all option series associated with that order have opened for trading. The CME will not execute any transactions in Electronic Complex Orders involving un-opened option series.

Pursuant to proposed Rule 980NY(c)(i)(B), the CME would use an opening auction process if there are Electronic Complex Orders on both sides of the Consolidated Book that are marketable against each other and that are priced within the derived Complex National Best Bid and Offer (''Complex NBBO'').[6] The resulting execution would occur at a market clearing price that is inside the derived Complex NBBO and that matches Electronic Complex Orders with each other to the extent marketable.[7] In determining priority, the CME would give priority to Electronic Complex Orders whose net price is better than the market clearing price first, and then to Electronic Complex Orders at the market clearing price.[8]

Example #1

This example will show how the CME would conduct an opening auction where the market clearing price is at the midpoint of the derived Complex NBBO.

Assume the derived Complex NBBO for a given complex order strategy is $1.10–$1.20 (midpoint = 1.15). Assume there are four Electronic Complex Orders in the Consolidated Book for the same strategy; two buy orders and two sell orders, each order represents 100 units of the same strategy. The first sell order is priced at $1.11 and the second sell order is priced at $1.13. The first buy order can pay 1.19 and the second can pay $1.17. When the CME opens, (at a market clearing price nearest the mid-point where the most volume can trade) the $1.11 sell order for 100 units will execute against the $1.19 buy order for 100 units and the $1.13 sell order for 100 units will execute against the $1.17 buy order for 100 units (orders are ranked and executed based on price priority). This would result in all volume trading at a single market clearing price of $1.15, which in this example is the exact mid-point price of the derived Complex NBBO.

Example #2

This example will show how the CME would conduct an opening auction where the market clearing price is not equal to the midpoint of the derived Complex NBBO.

Assume the derived Complex NBBO for a given complex order strategy is $1.10–$1.20 (midpoint = 1.15). Assume there are three Electronic Complex Orders in the Consolidated Book, all for the same complex order strategy. The first order is a sell order priced at $1.19 for 20 units, the second order is a sell order priced at $1.18 for 10 units, and the third order is a buy order paying $1.19 for 50 units. When the CME opens, 30 units of the buy order would trade against the two sell orders, with the $1.18 sell order for 10 units having first priority followed by the $1.19 sell order for 20 units (orders are ranked and executed based on price priority). Because the market clearing price in this example could not equal the midpoint ($1.15), as that price would violate the limit price of both sell orders, the market clearing price would be $1.19, as that is the price at which the most volume could trade. This would result in the CME conducting the auction at the market clearing price of $1.19. In this example, the remaining 20 units of the buy order would be subject to processing under Rule 980NY (*e.g.,* remain in the Consolidated Book if not marketable against the individual orders and quotes in the Consolidated Book or other Electronic Complex Orders in the Consolidated Book, or execute if marketable subject to the applicable priority and price-check parameters).

The opening auction process of the CME as described in proposed Rule 980NY(c)(i)(B) is consistent with the

[4] *See* Securities Exchange Act Release No.68844 (February 6, 2013), 78 FR 9953 (February 12, 2013) (SR–CBOE–2013–007).

[5] *See* CBOE Rule 6.53C.11(b), which provision was one of several discussed in CBOE's recent filing (see id.). The Exchange notes, however, that this filing differs from the CBOE's recent filing (see id.) in that it provides specificity about the market clearing price and cross-references existing Exchange rules regarding auction pricing (see infra n. 6).

[6] The derived Complex NBBO will be derived by using the best prices for the individual leg markets comprising the Electronic Complex Order as disseminated by OPRA, that when aggregated create a derived NBBO for that same strategy.

[7] The ''market clearing price'' for Electronic Complex Orders is similar to the ''opening price'' for an individual series as described in Rule 952NY(c). Specifically, the market clearing price for an Electronic Complex Order will be the price, as determined by the System, at which the most volume can be traded at or nearest to the midpoint of the initial uncrossed derived Complex NBBO. Midpoint pricing will not occur if such price would result in the violation of the limit price of the Electronic Complex Order(s) involved. Instead, the market clearing price would be the limit price of the order(s) at which the most volume can be traded. Because listed options may not be priced in sub-penny increments nor will the OCC clear options at sub-penny prices, if the calculated midpoint price results in a sub-penny price, the market clearing price will round down to the nearest even penny (*i.e.,* a calculated midpoint price of $1.005 will round to $1.00). The Exchange notes that CBOE, which is also subject to the same restrictions on sub-penny pricing of listed options, did not disclose in their filing (see supra n. 3) whether it would round the market clearing price (up or down) to the nearest whole cent if mid-point pricing resulted in a sub-penny market clearing price.

[8] The Exchange notes that Electronic Complex Orders residing in the Consolidated Book at the opening of trading that are not marketable against other Electronic Complex Orders do not participate in the auction process. As is the case today, these orders will automatically execute against individual orders or quotes residing in the Consolidated Book after the CME opens, provided the Electronic Complex Order can be executed in full (or in a permissible ratio) by the orders or quotes in the Consolidated Book. See current Rule 980NY(c)(ii) which the Exchange is proposing to renumber as Rule 980NY(c)(ii)(B). The Exchange notes that this functionality is similar to CBOE Rule 6.53C.11(a), which the CBOE discussed in its recent filing. *See* supra n. 3.

opening auction process for Electronic Complex Orders at the CBOE.[9]

The Exchange is proposing to adopt Rule 980NY(c)(i)(C) to explain that Electronic Complex Orders that are not executed during the opening auction process are eligible to trade during Core Trading against the individual quotes and orders residing in the Consolidated Book of the same series that comprise the complex order strategy. The processing of Electronic Complex Orders during Core Trading is done in accordance with Rules 980NY(c)(i)–(iii), which the Exchange is proposing to renumber as Rules 980NY(c)(ii)(A)–(C).

Consistent with the foregoing changes, the Exchange also proposes to re-number the remaining subsections of Rule 980NY(c)(i)–(iii) under a new section heading, ''Execution of Complex Orders During Core Trading,'' with no changes to the substance of the rule text.

Additionally, the Exchange is proposing to amend the text of Rule 980NY(c) by deleting the representation that Electronic Complex Orders will be executed at the best available price available. Because existing and proposed rules explain precisely how Electronic Complex Orders are priced (i.e. at a market clearing price during an opening auction process, or at the prices of the individual orders and quotes in the Consolidated Book during Core Trading), the reference to ''the best available price'' is superfluous. The proposed resulting language of Rule 980NY(c) would be consistent with rules describing how Electronic Complex Orders are traded on NYSE Arca.[10]

Order Types and Contingencies Applicable to Electronic Complex Orders

The Exchange also proposes to amend and reorganize Rule 980NY(d), which explains order types, contingencies and modifiers applicable to Electronic Complex Orders, as follows:

• The CME presently accepts only Limit Orders [11] and Limit Orders designated as PNP Plus.[12] The Exchange proposes to amend Rule 980NY(d) to codify this functionality. As proposed, Rule 980NY(d)(1) would state that Limit Orders and Limit Orders designated as PNP Plus are valid types of Electronic Complex Orders. Complex Limit Orders and Complex Limit Orders designated as PNP Plus are processed in the same manner as a similarly marked single-leg order.

• Proposed Rule 980NY(d)(2) would provide that Electronic Complex Orders may be designated as Fill-or-Kill (''FOK'') [13] and All-or-None (''AON'').[14] The use of FOK or AON contingency is consistent with complex order trading at other options exchanges.[15] Electronic Complex Orders with a FOK or AON contingency would be processed in the same manner as a similarly marked single-leg order.

• Currently, the Rule 980NY(d) provides that Electronic Complex Orders may be entered as IOC [16] or Day,[17] and the Exchange now proposes making the Good-til-Cancel (''GTC'') [18] modifier available for Electronic Complex Orders. As proposed, Rule 980NY(d)(3) would provide that Electronic Complex Order may be entered as IOC, Day, or GTC.[19] The use of GTC as a time-in-force is consistent with complex orders trading at other option exchanges.[20] Electronic Complex Orders marked IOC, Day or GTC would be processed in the same manner as similarly marked single-leg orders.

Implementation

The Exchange will implement the proposed rule changes described above upon the implementation of technology updates applicable to the CME. The Exchange will announce the implementation date of the proposed rule change by Trader Update.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act [21] in general and furthers the objectives of Section 6(b)(5) of the Act [22] in particular in that it should promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

Specifically, the Exchange believes the proposed rule governing the opening auction process via the CME for Electronic Complex Orders increases opportunities for all types of market participants (*e.g.,* public customers, broker-dealers and market-makers) to participate in trading with Electronic Complex Orders. This participation may promote liquidity and result in better prices for customers throughout the trading day, including when the CME opens, which, in turn, protects investors and advances public interest.

The Exchange also believes that codifying the available types of orders eligible to be entered as Electronic Complex Orders, reorganizing the variations of Electronic Complex Order types available on the Exchange and listing those in a clear and precise structure, will remove impediments to and perfect the mechanism of a free and open market. In addition, adopting the GTC, FOK and AON designations will further serve to remove impediments to a free an open market and a national market system by affording market participants on NYSE Amex Options similar investment choices to what is available at other market centers.[23]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. As noted above, the Exchange believes that expanding the variations of order types via contingencies and modifiers will encourage more Electronic Complex Orders to the Exchange, which is pro-competitive. Further the planned enhancement to provide a single price open, if possible, within the CME increases opportunities for all types of market participants (e.g., public customers, broker-dealers and market-makers) to participate in the trading of complex orders. This participation may promote liquidity and result in better prices for customers throughout the trading day, including when the CME opens. The Exchange does not believe that the changes proposed by this filing imposes any burden on other Exchanges as the most substantive change proposed, that being the complex order opening auction, is similar to functionality that is already available on at least one competing options Exchange.[24] The Exchange has found that when multiple Exchanges introduce similar functionality, other Exchanges move to enhance their own systems and product offerings which are generally beneficial to all investors.

[9] *See* CBOE Rule 6.53C.11(b).

[10] *See* NYSE Arca Rule 6.91(a)(2).

[11] *See* NYSE MKT Rule 900.3NY(b).

[12] *See* NYSE MKT Rule 900.3NY(w).

[13] *See* NYSE MKT Rule 900.3NY(l).

[14] *See* NYSE MKT Rule 900.3NY(d)(4).

[15] *See* CBOE Rule 6.53C(b) and NYSE Arca Rule 6.91(b).

[16] *See* NYSE MKT Rule 900.3NY(k).

[17] *See* NYSE MKT Rule 900.3NY(m).

[18] *See* NYSE MKT Rule 900.3NY(n).

[19] *See* NYSE MKT Rule 900.3NY(n).

[20] *See* CBOE Rule 6.53C(c)(iii) and NYSE Arca Rule 6.91(b).

[21] 15 U.S.C. 78f(b).

[22] 15 U.S.C. 78f(b)(5).

[23] *See supra* nn. 14, 19.

[24] *See supra* nn. 3, 8.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [25] and Rule 19b–4(f)(6) thereunder.[26] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[27]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [28] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2014–42 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2014–42. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room at 100 F Street NE., Washington, DC 20549–1090 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2014–42, and should be submitted on or before May 29, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–10538 Filed 5–7–14; 8:45 am]

BILLING CODE 8011–01–P

[25] 15 U.S.C. 78s(b)(3)(A)(iii).

[26] 17 CFR 240.19b–4(f)(6).

[27] 17 CFR 240.19b–4(f)(6)(iii). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[28] 15 U.S.C. 78s(b)(2)(B).

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72086; File No. SR–EDGX–2014–05]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change To Adopt a New Order Type Called the Mid-Point Discretionary Order

May 2, 2014.

On March 7, 2014, EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its rules to add a new order type called the Mid-Point Discretionary Order and to reflect the priority of Mid-Point Discretionary Orders. The proposed rule change was published for comment in the **Federal Register** on March 25, 2014.[3] The Commission received no comment letters.

Section 19(b)(2) of the Act [4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether these proposed rule changes should be disapproved. The 45th day for this filing is May 9, 2014.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider and take action on the Exchange's proposed rule change.

Accordingly, pursuant to Section 19(b)(2)(A)(ii)(I) of the Act [5] and for the reasons stated above, the Commission designates June 23, 2014, as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 71747 (March 19, 2014), 79 FR 16401.

[4] 15 U.S.C. 78s(b)(2).

[5] 15 U.S.C. 78s(b)(2)(A)(ii)(I).

disapprove, the proposed rule change (File No. SR–EDGX–2014–05).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–10540 Filed 5–7–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72081; File No. SR–NYSEArca–2014–04]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 1 and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To Amend NYSE Arca, Inc.'s Rules by Revising the Order of Priority of Bids and Offers When Executing Orders in Open Outcry

May 2, 2014.

I. Introduction

On January 15, 2014, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to revise the order of priority of bids and offers when executing orders in open outcry. The proposed rule change was published for comment in the **Federal Register** on February 3, 2014.[3] On March 18, 2014, the Commission extended the time period for Commission action on the proposal to May 2, 2014.[4] The Commission received ten comment letters from seven commenters regarding the proposal,[5] as well as a response to the comment letters from NYSE Arca.[6] On April 29, 2014, the Exchange filed Amendment No. 1 to the proposed rule change.[7] The Commission is publishing this notice and order to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons and to institute proceedings pursuant to Section 19(b)(2)(B) of the Act[8] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to the proposed rule change, nor does it mean that the Commission will ultimately disapprove the proposed rule change. Rather, as discussed below, the Commission seeks additional input from interested parties on the changes to the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposal

NYSE Arca proposes to amend its rules governing the priority of bids and offers on its Consolidated Book by revising the order of priority in open outcry to afford priority to bids and offers represented by Market Makers[9] and Floor Brokers[10] (collectively, ''Crowd Participants'')[11] over certain equal-priced bids and offers of non–Customers[12] on the Consolidated Book[13] during the execution of an order in open outcry on the Floor[14] of the Exchange.[15]

Current Rule 6.75(a) provides that any bids displayed on the Consolidated Book have priority over same-priced bids represented in open outcry. Such priority also is described in current Rule 6.47, which governs crossing orders in open outcry. Floor Broker crossing transactions, as described in Rule 6.47(a)(3), may not trade ahead of bids or offers on the Consolidated Book that are priced equal to or better than the proposed crossing price. The Exchange stated that, because of this priority afforded to the Consolidated Book, Crowd Participants who have negotiated a large transaction ultimately might not be able to participate in its execution.[16]

The Exchange proposed to restructure its priority rules so that bids and offers of Crowd Participants would have priority over equal-priced bids and offers of non-Customers on the Consolidated Book that are ranked in time priority behind any equal-priced Customer bids and offers on the Consolidated Book. Equal-priced Customer[17] interest would continue to be afforded priority over Crowd Participants in the execution of an open outcry transaction. In addition, consistent with the existing price/time priority presently applicable to bids and offers on the Consolidated Book, equal-priced non-Customer bids and offers ranked in time priority ahead of Customer interest also would be afforded priority over Crowd Participants in the execution of an open outcry transaction. In the Exchange's view, the proposed rule change strikes the appropriate balance between encouraging larger negotiated transactions in open outcry, while at the

[5] 15 U.S.C. 78s(b)(2)(A)(ii)(I).

[6] 17 CFR 200.30–3(a)(31).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 71425 (January 28, 2014), 79 FR 6258 (''Notice'').

[4] *See* Securities Exchange Act Release No. 71733 (March 18, 2014), 79 FR 16072 (March 24, 2014).

[5] *See* Letter from Darren Story, dated January 29, 2014 (''Story Letter I''); Letter from Abraham Kohen, AK FE Consultants LLC, dated January 31, 2014 (''Kohen Letter I''); Letter from David Spack, Chief Compliance Officer, Casey Securities, LLC, dated February 3, 2014 (''Casey Letter''); Letter from Abraham Kohen, AK FE Consultants LLC, dated February 4, 2014 (''Kohen Letter II''); Letter from Angel Alvira, dated February 12, 2014 (''Alvira Letter''); Letter from Donald Hart, dated February 12, 2014 (''Hart Letter I''); Letter from Doug Patterson, Chief Compliance Officer, Cutler Group, LP, dated February 13, 2014 (''Cutler Letter''); Letter from Regulatory Officer, Susquehanna International Group, LLP (''SIG''), dated March 14, 2014 (''SIG Letter''); and Letter from Darren Story, dated March 21, 2014 (''Story Letter II'').

[6] *See* Letter from Martha Redding, Chief Counsel, NYSE Euronext, dated April 4, 2014 (''NYSE Arca Response'').

[7] In Amendment No. 1, the Exchange revised the rule text for proposed Rule 6.47: (1) To clarify that Floor Brokers, when crossing two orders in open outcry, may not trade through any non-Customer bids or offers on the Consolidated Book that are priced better than the proposed execution price; and (2) to conform the term ''bids and offers'' to ''bids or offers'' in paragraphs (a) and (c) thereunder. Amendment No. 1 has been placed in the public comment file for SR–NYSEArca–2014–04 at *http://www.sec.gov/comments/sr-nysearca-2014-04/nysearca201404.shtml* (*see* letter from Martha Redding, Chief Counsel, NYSE Euronext, to Kevin M. O'Neill, Deputy Secretary, Commission, dated April 30, 2014) and also is available on the Exchange's Web site at *http://www.nyse.com/nysenotices/nysearca/rule-filings/pdf.action;jsessionid=FACF4F6772B1316D973F5D4E2D258ACE?file_no=SR-NYSEArca-2014-04&seqnum=2*.

[8] 15 U.S.C. 78s(b)(2)(B).

[9] *See* Rule 6.32 (Market Maker Defined).

[10] *See* Rule 6.43 (Options Floor Broker Defined).

[11] The term ''Crowd Participants'' means the Market Makers appointed to an option issue under Rule 6.35, and any Floor Brokers actively representing orders at the best bid or offer on the Exchange for a particular option series. *See* Rule 6.1(b)(38).

[12] A non-Customer is a market participant who does not meet the definition of Customer as defined in paragraph (c)(6) of Rule 15c3–1 under the Securities Exchange Act of 1934, 17 CFR 240.15c3–1. *See* Rule 6.1(b)(29).

[13] The Exchange also proposed to make non-substantive changes to existing rule text contained in Rules 6.47 and 6.75. *See* Notice, 79 FR at 6260 for a description of these non-substantive changes.

[14] *See* Rule 1.1(i).

[15] The term ''Consolidated Book'' means the Exchange's electronic book of limit orders for the accounts of Public Customers and broker-dealers, and Quotes with Size. *See* Rule 6.1(b)(37).

[16] *See* Notice, 79 FR at 6258. The Exchange stated that Crowd Participants could negotiate a transaction with an understanding of the make-up of bids and offers on the Consolidated Book at the beginning of open outcry. However, as the trade is executed, the Consolidated Book could update with newly-arriving electronically-entered bids and offers that have priority under current Rule 6.75(a). The Exchange noted that, given the speed at which quotes can flicker in the Consolidated Book, Crowd Participants who have agreed to a transaction in open outcry do not know if they will actually participate on the trade until after execution. *Id.* at 6258–59.

[17] *See supra* note 12.

same time protecting Customer interest on the Consolidated Book, and any interest that has time priority over such protected Customer interest.[18]

To effect this change to its floor priority rules, the proposal would amend the Exchange's rules as follows. As noted above, Rule 6.75(a) presently states that the highest bid shall have priority but where two or more bids for the same option contract represent the highest price and one such bid is displayed on the Consolidated Book, such bid shall have priority over any bid at the post (*i.e.,* the Trading Crowd.)[19] The Exchange proposed to amend Rule 6.75(a)[20] by limiting the priority of bids in the Consolidated Book over bids in the Trading Crowd solely to those bids for Customers along with non-Customers that are ranked in time priority ahead of such Customers.[21]

Rule 6.76 presently governs order ranking, display and allocation of orders on the NYSE Arca Options platform (''OX system''). The Exchange proposed new paragraph (d) to Rule 6.76 that would set forth the priority of bids and offers on the Consolidated Book against orders executed through open outcry in the Trading Crowd. The proposed text provides a step-by step-description of the order of priority to be afforded bids and offers of both Customers and non-Customers on the Consolidated Book. The Exchange noted that the priority scheme described in proposed Rule 6.76(d) is consistent with the proposed changes to Rule 6.75.[22]

The Exchange also proposed to include language in Rule 6.76(d)(4) that sets forth certain OTP Holder[23] obligations under Section 11(a) of the Act.[24] The proposed rule text states that, notwithstanding the priority scheme set forth in proposed Rule 6.76(d)(2), an OTP Holder effecting a transaction on the Floor for its own account, the account of an associated person, or an account with respect to which it or an associated person has investment discretion pursuant to the ''G Rule'' must still yield priority to any equal-priced non-OTP Holder bids or offers on the Consolidated Book.[25]

Rule 6.47 outlines the procedures used when a Floor Broker attempts to cross two orders in open outcry. Currently, Floor Brokers must trade against all equal-priced Customer and non-Customer bids and offers in the Consolidated Book before effecting a cross transaction in the Trading Crowd. The Exchange proposed to revise Rule 6.47 to conform the priority rules applicable to open outcry cross transactions to the proposed changes described above. Accordingly, the Exchange proposed to amend the procedures for the crossing scenarios described in Rule 6.47[26] by stating that Floor Brokers, when crossing two orders in open outcry, must yield priority to: (1) Any Customer bids or offers on the Consolidated Book that are priced equal to or better than the proposed execution price and to any non-Customer bids or offers on the Consolidated Book that are ranked ahead of such equal or better-priced Customer bids or offers; and (2) to any non-Customer bids or offers on the Consolidated Book that are priced better than the proposed execution price.[27] The Exchange noted that Floor Brokers would be required to trade against equal and better-priced Customer bids or offers on the Consolidated Book, any better-priced bids or offers of non-Customers on the Consolidated Book and any non-Customer bids or offers that are ranked ahead of equal-priced Customer bids or offers, before attempting a cross transaction.[28] Consistent with proposed Rule 6.75(a), Floor Brokers would not be required to trade against equal-priced non-Customer bids and offers that are ranked behind such Customer and non-Customer bids and offers.[29]

The Exchange stated that it would announce the implementation date of the proposed rule change by Trader Update to be published no later than 90 days following approval[30] and the implementation date would be no later than 90 days following the issuance of the Trader Update.

III. Comment Letters and NYSE Arca's Response

The Commission received ten comment letters from seven commenters.[31] NYSE Arca submitted a response to the comment letters.[32]

Five of the commenters, four of whom identified themselves as Crowd Participants on NYSE Arca,[33] generally were supportive of the proposal to revise the order of priority of bids and offers when executing orders in open outcry.[34] Four of these commenters stated a view that the proposal would allow NYSE Arca to compete with other exchanges that currently have similar priority rules.[35] Three of these

[18] *See* Notice, 79 FR at 6259.

[19] The term ''Trading Crowd'' means all Market Makers who hold an appointment in the option classes at the trading post where such trading crowd is located and all Market Makers who regularly effect transactions in person for their Market Maker accounts at that trading post, but generally will consist of the individuals present at the trading post. *See* Rule 6.1(b)(30).

[20] The Exchange noted that the changes made to Rule 6.75(a) dealing with the priority of ''bids'' also would effect a corresponding change to the meaning of Rule 6.75(b) dealing with ''offers,'' although there would be no change to the rule text in Rule 6.75(b). *See* Notice, 79 FR at 6259.

[21] *See* Notice, 79 FR at 6259–60 for examples illustrating how the Exchange's priority and allocation rules would be applied under the proposed rule change.

[22] *See* Notice, 79 FR at 6259. According to the Exchange, the inclusion of a description of open outcry priority procedures in Rule 6.76 would serve as a useful cross reference to Rule 6.75. The Exchange stated that including such a cross reference is consistent with similar rule structures by the Chicago Board Options Exchange, Inc. (''CBOE'') and NYSE MKT LLC (''NYSE MKT''). *See id.* (citing CBOE Rule 6.45A(b) and NYSE MKT Rule 964NY(e)).

[23] *See* Rule 1.1(q).

[24] Specifically, pursuant to Section 11(a)(1)(G) of the Exchange Act and Rule 11a1–1(T) thereunder (the ''G Rule''), an OTP Holder may effect transactions on the Floor for its own account, the account of an associated person, or an account with respect to which it or an associated person has investment discretion, provided that such transaction yields priority in execution to orders for the account of persons who are not OTP Holders or associated with OTP Holders. *See* 15 U.S.C. 78k(a)(1)(G) and 17 CFR 11a1–1(T). The Exchange stated that the proposed rule text is based on the rules of the Chicago CBOE and NYSE MKT on behalf of NYSE Amex Options. *See* Notice, 79 FR at 6259 (citing CBOE Rule 6.45A(b)(i)(D) and NYSE MKT Rule 910NY).

[25] According to the Exchange, at this time, no OTP Holder that currently operates on the Exchange's Floor as a Floor Broker enters orders for its own account, the account of an associated person, or an account with respect to which it or an associated person has investment discretion. The Exchange stated, however, that the Financial Industry Regulatory Authority, Inc. on behalf of NYSE Regulation, Inc., monitors whether Floor Brokers comply with Section 11(a) of the Act. *See id.*

[26] The crossing scenarios described in Rule 6.47 are: (a) Non-Facilitation (Regular Way) Crosses; (b) Facilitation Procedures; (c) Crossing Solicited Orders; (d) Mid-Point Cross; and (e) Customer-to-Customer Cross. The Exchange did not propose any change to Rule 6.47(d) relating to Mid-Point Cross, and thus Mid-Point Cross transactions would not be affected by the proposed rule change. Telephone conversation between Glenn Gsell, Managing Director, NYSE Arca and Commission staff, dated April 23, 2014.

[27] *See* Notice, 79 FR at 6259–60 for examples illustrating the proposed priority changes as applicable for Non-Facilitation and Facilitation Crosses. *See also* Amendment No. 1, supra note 7.

[28] *See* Notice, 79 FR at 6259.

[29] The Exchange stated its belief that affording priority to Crowd Participants ahead of such non-Customer interest on the Consolidated Book would create an increased incentive for block-sized transactions on the Floor. *See* Notice, 79 FR at 6259.

[30] *See* Notice, 79 FR at 6260.

[31] *See supra* note 5.

[32] *See supra* note 6.

[33] *See* Casey Letter (Floor Broker); Alvira Letter (Market Maker); Hart Letters I and II (Market Maker); Cutler Letter (Crowd Participant), supra note 5.

[34] *See* Story Letter I; Casey Letter; Alvira Letter; Hart Letter I; Cutler Letter; Hart Letter II; and Story Letter II.

[35] *See* Casey Letter (''The Proposal would still leave Arca Crowd Participants at a slight disadvantage to crowd participants on CBOE and Amex, but would go a long way towards leveling the playing field''); Alvira Letter (''I would like to see us in a competitive balance with the AMEX who

Continued

commenters stated that the proposal would allow Crowd Participants to compete with bids and offers of non-Customers on the Consolidated Book,[36] and two of them stated that Crowd Participants were the market participants most likely to provide services during times of market duress.[37] Two commenters also noted that the rule change would maintain priority for Customer orders resting on the Consolidated Book.[38]

Two commenters stated their belief that the proposal would increase competition on the floor for orders,[39] and one of these commenters noted that this competition would benefit the investing public.[40] Similarly, two commenters stated their view that the proposal would improve investor executions on the floor.[41] One commenter noted that the proposal would create an advantage for price improving customers.[42]

Two commenters expressed concerns about the proposal.[43] One commenter stated its view that the proposal would disenfranchise and disadvantage certain market participants, and suggested instead that the Exchange give size preference for equal bid prices.[44] The commenter believed that such preference would be a more fair way of revising the priority of bids and offers.[45] This commenter further noted that, under the Exchange's proposal, even small bids from Crowd Participants would take priority over electronic non-Customer bids.[46] The same commenter also noted its belief that best execution is not enhanced by allowing more exchanges to disadvantage other traders.[47] The commenter suggested that, regardless of the merits of high frequency trading, there was no reason to disadvantage all non-Customers by giving priority to one class of traders that would allow them to jump ahead of the queue.[48] One commenter who supported the proposal took issue with views expressed by this commenter and noted that current NYSE Arca rules are structured so as to disadvantage on-floor market makers.[49]

Another commenter also raised concerns with the proposal.[50] The commenter acknowledged that the proposal would reduce the number of instances where high-frequency, non-Customer orders arriving on to the book could cause Crowd Participants to be ''scaled-back'' from agreed upon negotiated amounts. The commenter acknowledged that this ''scaling back'' currently presented certain operational and hedging challenges to Crowd Participants.[51] The commenter remarked, however, that the proposal apparently was focused on attracting block cross volume to the Exchange.[52]

The commenter noted that when NYSE Arca uses the term ''Crowd Participants,'' it appears to refer to off-floor trading houses that attempt to internalize, in large part, block orders from institutional customers (*i.e.,* clean cross orders). The commenter acknowledged that this term also includes option market makers on the NYSE Arca Floor, but stated its view that the market maker participation in such orders is often minimal as a percentage of the total order size.[53] The commenter stated that the majority of available market maker liquidity at the Exchange is represented by a group of off-floor market maker firms that are collectively responsible for over 90% of displayed liquidity in multiply traded options, rather than on-floor market makers.[54]

The commenter further stated its view that the proposal would attract more clean-cross type orders that it believes would further insulate customer interest from competition by parties other than crowd participants.[55] In its view, because such negotiations usually occur outside the view of off-floor market makers, the crosses often occur at prices that have not been sufficiently vetted by those most likely to offer price improvement.[56] Given its concerns, the commenter believed that the proposal would be detrimental to investors, as the opportunity for price improvement would be significantly diminished.[57]

The commenter stated that the proposal did not provide an explanation regarding how more crowd participation in larger-sized block floor crosses would benefit customers or the market in general.[58] The commenter acknowledged that, as other floor exchanges have rules that place booked parity interest behind crowd participants, NYSE Arca's proposal at least relates in part to a legitimate competitive concern for the Exchange.[59]

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have already implemented the change''); Cutler Letter (''AMEX and CBOE currently have similar rules in place''); and Hart Letter II (''This would enable the PCX to level the rules with other exchanges''). *See also* SIG Letter (''the proposal at least relates in part to a legitimate competitive concern'').

[36] *See* Casey Letter (''The current market structure leaves NYSE Arca Crowd Participants and their customers at a distinct disadvantage . . . to non-customer professional traders, including High Frequency Traders''); Hart Letter I (''This rule disadvantages floor based market makers, which are the only ones providing liquidity when the markets are under duress''); and Cutler Letter (''This Proposed Rule change will level the competitive balance between floor market makers and electronic non-customer professional traders'').

[37] *See* Hart Letter I (''market makers . . . are the only ones providing liquidity when the markets are under duress'') and Story Letter II (''Perhaps one of the most compelling arguments for floor based market-makers is that they are required to stand in and make two-sided markets in volatile environments. They cannot just turn off the machines and walk away'').

[38] *See* Story Letter I (''It will allow for price discovery and improvement, but at the same time maintaining protection for customer orders resting on the order book'') and Casey Letter (''As Crowd Participants will still be required to interact with any Customer orders in the Consolidated Book, public Customers will not be adversely affected'').

[39] *See* Casey Letter (''The Proposal, by creating more uniform open outcry priority rules across floors, will increase competition for execution of these negotiated transactions'') and Story Letter II (''This filing will create an advantage for price improving CUSTOMER orders'') (emphasis in original).

[40] *See* Casey Letter (''Increasing competition in financial markets is nearly always beneficial for investors; the Proposal would increase competition among options floor brokers, and would ultimately benefit the investing public'').

[41] *See* Story Letter I (''This rule change will allow market participants to IMPROVE fills for customers without creating any disadvantage for other market participants'') and Casey Letter (''The execution of sizeable negotiated transactions in listed options is an important service provided to investors almost exclusively by the few remaining options Floor Brokers. The Proposal . . . will provide investors with greater flexibility, greater access to liquidity, and lower execution costs'') (emphasis in original).

[42] *See* Story Letter II.

[43] *See* Kohen Letter I; Kohen II; and SIG Letter.

[44] *See* Kohen Letter I.

[45] *See* Kohen Letter I.

[46] *See* Kohen Letter I (''otherwise Crowd Participants' 1 contract or 100 share bid will always take priority'').

[47] *See* Kohen Letter II.

[48] *See* Kohen Letter II.

[49] *See* Story Letter II.

[50] *See* SIG Letter.

[51] *See* SIG Letter at 1.

[52] *See* SIG Letter at 1 (''This focus is made apparent by Arca when it asserts that the new rule . . . will provide greater opportunity for bids and offers of crowd participants to participate in open outcry transaction [sic] and therefore promote larger-sized negotiated transactions'').

[53] *See* SIG Letter at 2.

[54] *See* SIG Letter at 2. The commenter remarked that, due to the off-floor market makers, electronic crossing systems for block sized orders generally have shown to be a better alternative to floor crosses, at least on a transparency and price competition basis. *Id.*

[55] *See* SIG Letter at 2.

[56] *See* SIG Letter at 2. The commenter also noted that it had submitted a Petition for Rulemaking filed with the Commission in April 2013. The commenter represented that, in that petition, several market making firms (including the commenter) asserted their belief that exchanges with trading floors would generate better priced executions for customers if they required crosses to be auctioned through electronic systems that included off-floor registered market makers in the respective option classes. *See* Petition for Rulemaking Regarding Option Floor Crosses, File No. 4–662 (April 22, 2013), available at *http://www.sec.gov/rules/petitions/2013/petn4–662.pdf.*

[57] *See* SIG Letter at 2–3.

[58] *See* SIG Letter at 3.

[59] *See* SIG Letter at 3 (''No doubt, Arca relies heavily on open outcry crosses for transaction volume. And, no doubt, the more often that high-

However, the commenter stated that it was important that exchanges give sufficient reason why a proposed rule is not injurious to customers or the market in general, and that the Exchange's proposal fails to give such reasons, perhaps, as the commenter opined, because there were none to give.[60] The commenter requested that the Commission establish the reasoning behind the Exchange's desire to increase block-cross volume and the reasons, if any, for NYSE Arca's belief that more (and cleaner) block floor crosses were good for investors.[61]

One commenter who supported the proposal raised issues with the arguments made by the commenter who expressed several concerns regarding the proposal.[62] The commenter who supported the proposal stated that the other commenter's concerns were misguided and unfounded because the proposal would allow for price improvement on any size order, whether large or not. The commenter who supported the proposal also noted the proposal would allow large market-making groups like that commenter to continue to provide inside markets and actually trade at those prices on NYSE Arca.[63] The commenter who supported the proposal disagreed with the suggestion that the proposal was necessarily about attracting clean-crosses outside the view of off-floor market makers, and stated its belief that the rule was designed to provide opportunity to improve markets.[64]

NYSE Arca provided a response letter addressing issues raised by the commenters.[65] NYSE Arca emphasized that the proposal would align the rules of the Exchange with other U.S. options exchange trading floors, but with a unique caveat that any non-Customer electronic interest with time priority over a Customer order in the Book also would maintain priority over floor participants.[66]

In response to one commenter's suggestion that the Exchange adopt a pure size priority model,[67] NYSE Arca stated that a wholesale restructuring of its priority model was beyond the scope of the current proposal.[68] NYSE Arca further noted its view that such a model would unduly disadvantage small size retail customer orders by allowing later-arriving professional participants willing to trade a larger quantity to be accorded priority.[69]

In response to one commenter who expressed several concerns regarding the proposal, NYSE Arca stated that the concerns about the practice of crossing institutional orders without electronic participants providing price improvement was unrelated to the proposal to allocate priority among participants at the same price.[70] NYSE Arca noted that its rules would continue to give priority to participants who display an improved price.[71]

NYSE Arca disagreed with that commenter's suggestion that the proposal would attract more clean-cross type orders, noting that the proposal was intended to promote liquidity and price discovery, and stated that nothing would ''insulate customer interest from competition by parties other than crowd participants.''[72] NYSE Arca stated that the proposal is intended to promote liquidity and price discovery on the Exchange by adopting a priority structure that would be similar to, but more favorable for electronic non-Customer participants than, the priority structure that exists on other U.S. options trading floors.[73] The Exchange pointed out that the execution price would have to be equal to or better than the NBBO and that Crowd Participants would have to yield to superior electronic bids or offers.[74] NYSE Arca stated further that the proposal would not reduce the ability or incentive for any participant to improve its displayed quote electronically, as the proposal only would impact the allocation of orders among multiple participants at the same price.[75]

In response to the commenter's request that the Exchange explain why more (and cleaner) block floor crosses are good for investors, the Exchange noted its view that institutional trading desks provide a valuable service by providing liquidity to their customers for block-size orders.[76] The Exchange stated, however, that it did not believe that the total level of larger-size block floor crosses in the industry would increase as a result of its proposal.[77] The Exchange noted that other trading floors currently execute existing institutional block cross volume, and the Exchange's goal was to offer an alternative venue for such executions.[78]

IV. Proceedings To Determine Whether To Disapprove SR–NYSEArca–2014–04 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act[79] to determine whether the proposed rule change should be approved or disapproved.[80] Institution of such proceedings is appropriate at this time in view of the legal and policy issues that are raised by the proposal and are discussed below. As noted above, institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described in greater detail below, the Commission seeks and encourages interested persons to comment on the proposal, as modified by Amendment No. 1, and provide the Commission with additional comment to inform the Commission's analysis whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.

Pursuant to Section 19(b)(2)(B) of the Act, the Commission is providing notice of the grounds for disapproval under consideration. In particular, Section 6(b)(5) of the Act[81] requires that the rules of an exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. In addition, Section 6(b)(8) of the Act[82] requires that rules of an exchange do not impose any burden on competition not

frequency professional booked orders break-up ''matched'' floor crosses, the more likely it becomes that off-floor facilitating firms will send their orders to other exchanges to be crossed'').

[60] *See* SIG Letter at 3.

[61] *See* SIG Letter at 3.

[62] *See* Story Letter II.

[63] *See* Story Letter II.

[64] *See* Story Letter II.

[65] *See* NYSE Arca Response Letter.

[66] *See* NYSE Arca Response Letter at 1–4.

[67] *See* Kohen Letters I and II.

[68] *See* NYSE Arca Response Letter at 2.

[69] *See* NYSE Arca Response Letter at 2.

[70] *See* NYSE Arca Response Letter at 2.

[71] *See* NYSE Arca Response Letter at 2.

[72] *See* NYSE Arca Response Letter at 2–3.

[73] *See* NYSE Arca Response Letter at 3.

[74] *See* NYSE Arca Response Letter at 3.

[75] *See* NYSE Arca Response Letter at 3.

[76] *See* NYSE Arca Response Letter at 3.

[77] *See* NYSE Arca Response Letter at 3.

[78] *See* NYSE Arca Response Letter at 3. The Exchange also provided examples where a firm looking to facilitate its customer order might choose to send the order to an exchange other than NYSE Arca under the Exchange's current priority rules.

[79] 15 U.S.C. 78s(b)(2)(B).

[80] Section 19(b)(2)(B) of the Act provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. The time for conclusion of the proceedings may be extended for up to an additional 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding or if the self-regulatory organization consents to the extension.

[81] 15 U.S.C. 78f(b)(5).

[82] 15 U.S.C. 78f(b)(8).

necessary or appropriate in furtherance of the Act.

NYSE Arca's proposal would revise the order of priority of bids and offers during the execution of orders in open outcry on NYSE Arca's Floor. The Exchange proposed to restructure its priority rules so that bids and offers of Crowd Participants would have priority over equal-priced bids and offers of Customer bids and offers on the Consolidated Book and bids and offers of non-Customers on the Consolidated Book that are ranked in time priority behind any equal-priced Customer bids and offers on the Consolidated Book. Thus, equal-priced Customer interest would continue to be afforded priority over Crowd Participants in the execution of an open outcry transaction. In addition, consistent with the existing price/time priority presently applicable to bids and offers on the Consolidated Book, equal-priced non-Customer bids and offers ranked in time priority ahead of Customer interest also would be afforded priority over Crowd Participants in the execution of an open outcry transaction.

The Exchange believes that its proposal strikes the appropriate balance between encouraging larger negotiated transactions in open outcry, while at the same time protecting Customer interest on the Consolidated Book, and any interest that has time priority over such protected Customer interest. The Exchange believes that larger-sized negotiated transactions will in turn lead to greater competition for orders, creating a more robust open outcry market and benefiting investors who choose to send orders to the Exchange. In the Exchange's view, the proposal would align its rules governing priority during open outcry transactions with the floor priority rules of other U.S. options exchanges, except that any non-Customer interest in the Consolidated Book with time priority over a booked Customer order would maintain priority over the trading crowd.

As detailed above, five commenters favored the proposal,[83] and two commenters expressed concerns about the proposal.[84] One of these commenters stated its view that the Exchange had not provided an explanation regarding how more crowd participation in larger-sized block floor crosses would benefit customers or the market in general.[85] This commenter stated its belief that the proposal would further insulate customer interest from competition by off-floor market makers that primarily display their liquidity electronically, who the commenter believes would be most likely to offer price improvement. The other commenter who questioned the proposal believed that the proposal could disenfranchise and disadvantage certain market participants and suggest that size preference be given for equal bid prices. The Exchange in response stated that the first commenter's concerns were entirely unrelated to the proposal and that the proposal was instead intended to promote liquidity and price discovery, and that the second commenter's suggestion on size priority was beyond the scope of the proposal.

The Commission believes that questions are raised as to whether NYSE Arca's proposal is consistent with: (1) The requirements of Section 6(b)(5) of the Act, including whether the Exchange's proposed revisions to its rules regarding the order of priority in open outcry are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers; and (2) the requirements of Section 6(b)(8) of the Act, including whether the Exchange's proposed revisions to its rules regarding the order or priority in open outcry impose any unnecessary or inappropriate burden on competition. The Commission believes that the issues raised by the proposed rule change can benefit from additional consideration and evaluation.

V. Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data and arguments with respect to the concerns identified above, as well as any others they may have with the proposal, as modified by Amendment No. 1. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change, as modified by Amendment No. 1, is inconsistent with Sections 6(b)(5) and 6(b)(8) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[86]

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1 and regarding whether the proposed rule change, as modified by Amendment No. 1, should be approved or disapproved by May 29, 2014. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by June 12, 2014. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2014–04 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2014–04. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method.

The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change;

[83] *See supra* note 33.

[84] *See supra* note 43.

[85] *See* SIG Letter.

[86] Section 19(b) (2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available.

All submissions should refer to File Number SR–NYSEArca–2014–04 and should be submitted on or before May 29, 2014. If comments are received, any rebuttal comments should be submitted by June 12, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[87]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–10535 Filed 5–7–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72088; File No. SR–EDGX–2014–14]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend EDGX Rule 11.5 Regarding the Route Peg Order

May 2, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 21, 2014, EDGX Exchange, Inc. (''EDGX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Route Peg Order under Rule 11.5(c)(17) to permit: (i) Executions against routable orders that are equal to or less than the aggregate size of the Route Peg Order interest available at that price; and (ii) Users [3] to add a minimum execution quantity instruction. All of the changes described herein are applicable to EDGX Members.

The text of the proposed rule change is available on the Exchange's Internet Web site at *www.directedge.com,* at the Exchange's principal office, and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Route Peg Order under Rule 11.5(c)(17) to permit: (i) Executions against routable orders that are equal to or less than the aggregate size of the Route Peg Order interest available at that price, which would replace the current requirement that routable orders be equal to or less than the size of an individual Route Peg Order; and (ii) Users to add a minimum execution quantity instruction.

A Route Peg Order is a non-displayed limit order that posts to the EDGX Book, and thereafter is eligible for execution at the national best bid (''NBB'') for buy orders and national best offer (''NBO'') for sell orders against routable orders that are equal to or less than the size of the Route Peg Order.[4] Route Peg Orders are passive, resting orders on the EDGX Book [5] and do not take liquidity. Route Peg Orders may be entered, cancelled, and cancelled/replaced prior to and during Regular Trading Hours.[6] Route Peg Orders are eligible for execution in a given security during Regular Trading Hours, except that, even after the commencement of Regular Trading Hours, Route Peg Orders are not eligible for execution (1) in the opening cross, and (2) until such time that regular session orders in that security can be posted to the EDGX Book. A Route Peg Order does not execute at a price that is inferior to a Protected Quotation, and is not permitted to execute if the NBBO is locked or crossed. Any and all remaining, unexecuted Route Peg Orders are cancelled at the conclusion of Regular Trading Hours.

Aggregate Size

As noted above, Route Peg Orders will currently only trade with routable orders that are equal to or smaller in quantity than the order quantity of an individual Route Peg Order. The Exchange proposes to amend the operation of the Route Peg Order to permit it to execute against routable orders that are equal to or less than the *aggregate* size of the Route Peg Order *interest available at that price.* The Exchange believes this change would incentivize Users seeking large size executions to route orders to the Exchange by increasing opportunities for executions against Route Peg Orders. This proposed change to the Route Peg Order is similar to the operation of the Nasdaq Stock Market LLC's (''Nasdaq'') Supplemental Order and NYSE Arca, Inc.'s (''NYSE Arca'') Tracking Order, which both only execute if the size of the incoming order is less than or equal to the aggregate size of Supplemental Order or Tracking Order interest available at that price.[7]

Minimum Execution Quantity

The Exchange also proposes to amend the Route Peg Order under Rule 11.5 to add optional functionality to allow Users to designate a minimum execution quantity. As proposed, a minimum execution quantity on a Route Peg order will no longer apply where the number of shares remaining after a partial execution are less than the minimum execution quantity. This proposed change is similar to the operation of NYSE Arca, Inc.'s Tracking Order, which permits Tracking Orders to include a minimum size requirement.[8] The Exchange believes that providing Users with the option to designate a minimum quantity for Route Peg Orders will promote the entry of

[87] 17 CFR 200.30–3(a)(12); 17 CFR 200.30–3(a)(57).

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19B–4.

[3] The term ''User'' is defined as ''any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3.'' *See* Exchange Rule 1.5(ee).

[4] *See* Securities Exchange Act Release No. 67726 (August 24, 2012), 77 FR 52771 (August 30, 2012) (Order Approving the Route Peg Order).

[5] The ''EDGX Book'' is defined as ''the System's electronic file of orders.'' *See* Exchange Rule 1.5(d).

[6] ''Regular Trading Hours'' is defined as ''the time between 9:30 a.m. and 4:00 p.m. Eastern Time.'' *See* Exchange Rule 1.5(y).

[7] *See* Nasdaq Rules 4751(f)(14), 4751(g) and 4757(a)(1)(D); *see also* NYSE Arca Rule 7.31(f).

[8] On NYSE Arca, if the Tracking Order with a minimum size requirement is executed but not exhausted and the remaining portion of the Tracking Order is less than the minimum size requirement, NYSE Arca would cancel the Tracking Order. *See* NYSE Arca Rule 7.31(f). *See also* Securities Exchange Act Release No. 71366 (January 22, 2014), 79 FR 4515 (January 28, 2014) (SR–NYSEArca-2014–01) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Equities Rule 7.31 to Add a Minimum Execution Size Designation for Tracking Orders).

liquidity at the Exchange because Users entering such orders will be assured of obtaining a larger sized execution. The Exchange believes that the proposed rule change could attract Users that are seeking larger executions to enter Route Peg Orders because by designating a minimum quantity, the submitting User would be assured that they are not traded against by smaller-sized interest.

Implementation Date

The Exchange will announce the effective date of the proposed rule change in a Trading Notice to be published no later than 30 days following publication of the proposed rule change by the Commission.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [9] in general, and furthers the objectives of Section 6(b)(5) of the Act [10] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

Aggregate Size

The Exchange believes that the proposal to permit executions against routable orders that are equal to or less than the aggregate size of the Route Peg Order interest available at that price would remove impediments to and perfect the mechanism of a free and open market and protect investors and the public interest because it would incentivize Users seeking large size executions to route orders to the Exchange by increasing opportunities for executions against Route Peg Orders in a manner similar to existing functionality available on Nasdaq and NYSE Arca.[11] The proposed rule change also encourages market participants to post liquidity at the NBBO on the Exchange through the use of Route Peg Orders, thereby promoting just and equitable principles of trade and removing impediments to and perfecting the mechanism of a free and open market and national market system. Moreover, the proposed rule changes would protect investors and the public interest by increasing the probability of an execution on the Exchange at the NBBO in the event that the order would otherwise be shipped to an external destination and potentially miss an execution at the NBBO while in transit. Lastly, the Exchange does not believe that this will permit unfair discrimination among customers, brokers, or dealers because it will be available to all Users.

Minimum Execution Quantity

The Exchange also believes its proposal to amend the Route Peg Order under Rule 11.5 to add optional functionality to allow Users to designate a minimum execution quantity removes impediments to and perfects the mechanism of a free and open market and protects investors and the public interest because it would provide an incentive for Members seeking larger-sized executions both to post liquidity at the Exchange using this feature and to route larger-sized orders to the Exchange because of the potential for an execution against such liquidity. The Exchange further believes that adding an optional minimum quantity would remove impediments to and perfect the mechanism of a free and open market system because the proposed functionality is similar to functionality available at the NYSE Arca.[12] The Exchange believes it is appropriate to provide an option for Users seeking to provide such liquidity to not only designate a minimum execution quantity, but for a minimum execution quantity on a Route Peg order to no longer apply where the number of shares remaining after a partial execution are less than the minimum execution quantity. Doing so would permit Users to continue to have their Route Peg Orders eligible for execution in such circumstances. In such case, Users will have the option to cancel their Route Peg Order if they wish.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the proposal will promote competition by enhancing the value of the Exchange's Route Peg Order by mirroring the function of similar order types offered by Nasdaq and NYSE Arca.[13]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [14] and Rule 19b–4(f)(6) thereunder.[15] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [16] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–EDGX–2014–14 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] *See supra* note 8 and accompanying text.

[12] *See supra* note 9 [sic] and accompanying text.

[13] *See supra* notes 8 [sic] and 9 [sic] and accompanying text.

[14] 15 U.S.C. 78s(b)(3)(A)(iii).

[15] 17 CFR 240.19b–4(f)(6).

[16] 15 U.S.C. 78s(b)(2)(B).

Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGX–2014–14. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–EDGX–2014–14 and should be submitted on or before May 29, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–10541 Filed 5–7–14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72082; File No. SR–CBOE–2014–038]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Availability of Certain Delayed Market Data on CBOE Web Sites

May 2, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 22, 2014, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') proposes to make certain market data available on a delayed basis on its Web site and other Web sites. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to allow the Exchange to make certain market data available on a delayed basis on its Web site (www.cboe.com) and other Web sites including its social media Web sites and Web sites of CBOE's affiliates (collectively, ''CBOE Web sites'').

Specifically, the Exchange proposes to publish on CBOE Web sites last sale information[3] regarding ''large'' options trades that occur in open outcry on the CBOE trading floor. A ''large'' trade for purposes of this proposed rule change is a trade with a quantity of 5,000 contracts or more. Last sale information would be published for executions of both simple orders and multi-part (''complex'') orders. This last sale information is referred to herein as the ''Data''.

The Data would be published continuously on CBOE Web sites throughout the trading day on a ''delayed'' basis, i.e., data would not be made available on CBOE Web sites sooner than fifteen (15) minutes after the same information has been made publicly available by the Options Price Reporting Authority (''OPRA'').

The Data would be made publicly available to all users of CBOE Web sites at no charge.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[4] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[5] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers because the Data would be made publicly available to all users of CBOE Web sites on an equivalent basis.

In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. The Exchange believes that this proposal is in keeping with those principles by promoting increased transparency through the dissemination of useful data and also by clarifying its availability to market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Last sale information includes price, volume or related information reflecting completed transactions. It does not include information regarding the parties to a trade.

[4] 15 U.S.C. 78f(b).

[5] *Id.*

Exchange believes the proposed rule change is pro-competitive in that it would allow the Exchange to provide investors with an additional option for accessing certain CBOE last sale information that may help to inform their trading decisions. Last sale information for simple orders that would be published pursuant to this proposed rule change is also available in the OPRA data feed and from market data vendors. Last sale information for complex orders that would be published pursuant to this proposal is also available in the CBOE COB Data Feed [6] and from market data vendors. Additionally, all of the Data is included in the CBOE BBO Data Feed made available by MDX. Furthermore, the CBOE Web site includes a feature that provides delayed data for options (as do many other financial Web sites). The Exchange believes the proposed rule change would help attract more visitors to CBOE Web sites, which in turn may help attract new users and new order flow to the Exchange, thereby improving the Exchange's ability to compete in the market for options order flow and executions.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission,[7] the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b-4(f)(6) thereunder.[9] At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to rule-comments@sec.gov. Please include File Number SR–CBOE–2014–038 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2014–038. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2014–038 and should be submitted on or before May 29, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–10536 Filed 5–7–14; 8:45 am]

BILLING CODE 8011–01–P

[6] The CBOE COB Data Feed is made available by CBOE's affiliate Market Data Express, LLC (''MDX'').

[7] The Exchange has fulfilled this requirement.

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72085; File No. SR–NYSEArca–2014–53]

Self-Regulatory Organizations; NYSE Arca Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 6.91 To Adopt Rules Governing an Opening Auction Process for Electronic Complex Orders and To Amend and Reorganize Existing Rules Specifying Available Electronic Complex Order Types and Modifiers

May 2, 2014.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on April 28, 2014, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 6.91 to adopt rules governing an opening auction process for Electronic Complex Orders and to amend and reorganize existing rules specifying available Electronic Complex Order types and modifiers. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 6.91 (Electronic Complex Order Trading) to adopt rules governing an opening auction process for Electronic Complex Orders and to amend and reorganize existing rules specifying order types and modifiers applicable to Electronic Complex Orders.

Opening Auction Process for Electronic Complex Orders

The Exchange is proposing to amend Rule 6.91(a)(2) by establishing subsection (i) to describe how orders would be handled by the Complex Matching Engine (''CME'') during a new opening auction process for Electronic Complex Orders that would allow the Exchange to offer eligible trading interest at single-price opening. Currently, there is no single-price opening. Rather, the CME begins processing each Electronic Complex Order in the Consolidated Book based on price/time priority after all of the individual component option series that make up a complex order strategy have opened. By adopting the proposed opening auction process for the CME, the Exchange is seeking to maximize both price discovery and execution opportunities for participants utilizing Electronic Complex Orders. The Chicago Board Options Exchange (''CBOE'') recently adopted similar rules to describe how their Complex Order Book (''COB'') functions at the opening of trading.[4] The Exchange notes that the proposed changes to Rule 6.91(a) regarding the new opening auction process for Electronic Complex Orders are substantially similar in all material respects to those of the CBOE.[5]

Pursuant to proposed Rule 6.91(a)(2)(i)(A), Electronic Complex Orders would not participate in opening auctions for individual component option series legs conducted pursuant to Rule 6.64. The Exchange further proposes to provide that the CME would not begin processing Electronic Complex Orders until all of the individual component option series legs that make up a complex order strategy have opened. The intent of this paragraph is to make clear to market participants that an Electronic Complex Order is not eligible to trade until such time that all option series associated with that order have opened for trading. The CME will not execute any transactions in Electronic Complex Orders involving un-opened option series.

Pursuant to proposed Rule 6.91(a)(2)(i)(B), the CME would use an opening auction process if there are Electronic Complex Orders on both sides of the Consolidated Book that are marketable against each other and that are priced within the derived Complex National Best Bid and Offer (''Complex NBBO'').[6] The resulting execution would occur at a market clearing price that is inside the derived Complex NBBO and that matches Electronic Complex Orders with each other to the extent marketable.[7] In determining priority, the CME would give priority to Electronic Complex Orders whose net price is better than the market clearing price first, and then to Electronic Complex Orders at the market clearing price.[8]

Example #1

This example will show how the CME would conduct an opening auction where the market clearing price is at the midpoint of the derived Complex NBBO.

Assume the derived Complex NBBO for a given complex order strategy is $1.10–$1.20 (midpoint = 1.15). Assume there are four Electronic Complex Orders in the Consolidated Book for the same strategy; two buy orders and two sell orders, each order represents 100 units of the same strategy. The first sell order is priced at $1.11 and the second sell order is priced at $1.13. The first buy order can pay 1.19 and the second buy order can pay $1.17. When the CME opens, (at a market clearing price nearest the mid-point where the most volume can trade) the $1.11 sell order for 100 units will execute against the $1.19 buy order for 100 units and the $1.13 sell order for 100 units will execute against the $1.17 buy order for 100 units (orders are ranked and executed based on price priority). This would result in all volume trading at a single market clearing price of $1.15, which in this example is the exact mid-point price of the derived Complex NBBO.

Example #2

This example will show how the CME would conduct an opening auction where the market clearing price is not equal to the midpoint of the derived Complex NBBO.

Assume the derived Complex NBBO for a given complex order strategy is $1.10–$1.20 (midpoint = 1.15). Assume there are three Electronic Complex Orders in the Consolidated Book all for the same strategy. The first order is a sell order priced at $1.19 for 20 units,

[4] *See* Securities Exchange Act Release No. 68844 (February 6, 2013), 78 FR 9953 (February 12, 2013) (SR–CBOE–2013–007).

[5] *See* CBOE Rule 6.53C.11(b), which provision was one of several discussed in CBOE's recent filing (see id.). The Exchange notes, however, that this filing differs from the CBOE's recent filing (see id.) in that it provides specificity about the market clearing price and cross-references existing Exchange rules regarding auction pricing (see infra n. 6).

[6] The derived Complex NBBO will be derived by using the best prices for the individual leg markets comprising the Electronic Complex Order as disseminated by OPRA, that when aggregated create a derived NBBO for that same strategy.

[7] The ''market clearing price'' for Electronic Complex Orders is similar to the ''opening price'' for an individual series as described in Rule 6.64(c). Specifically, the market clearing price for an Electronic Complex Order will be the price, as determined by the System, at which the most volume can be traded at or nearest to the midpoint of the initial uncrossed derived Complex NBBO. Midpoint pricing will not occur if such price would result in the violation of the limit price of the Electronic Complex Order(s) involved. Instead, the market clearing price would be the limit price of the order(s) at which the most volume can be traded. Because listed options may not be priced in sub-penny increments and the OCC will not clear options at sub-penny prices, if the calculated midpoint price results in a sub-penny price, the market clearing price will be rounded down to the nearest even penny (*i.e.,* a calculated midpoint price of $1.005 will round to $1.00). The Exchange notes that CBOE, which is also subject to the same restrictions on sub-penny pricing of listed options, did not disclose in their filing (see supra n. 3) whether it would round the market clearing price (up or down) to the nearest whole cent if mid-point pricing resulted in a sub-penny market clearing price.

[8] The Exchange notes that Electronic Complex Orders residing in the Consolidated Book at the opening of trading that are not marketable against other Electronic Complex Orders do not participate in the auction process. As is the case today, these orders will automatically execute against individual orders or quotes residing in the Consolidated Book after the CME opens, provided the Electronic Complex Order can be executed in full (or in a permissible ratio) by the orders or quotes in the Consolidated Book. *See* current Rule 6.91(a)(2)(ii), which the Exchange is proposing to renumber as Rule 6.91(a)(ii)(B). The Exchange notes that this functionality is similar to CBOE Rule 6.53C.11(a), which the CBOE discussed in its recent filing. *See* supra n. 3.

the second order is a sell order priced at $1.18 for 10 units, and the third order is a buy order paying $1.19 for 50 units. When the CME opens, 30 units of the buy order would trade against the two sell orders, with the $1.18 sell order for 10 units having first priority followed by the $1.19 sell order for 20 units (orders are ranked and executed based on price priority). Because the market clearing price in this example could not equal the midpoint ($1.15), as that price would violate the limit price of both sell orders, the market clearing price would be $1.19, as that is the price at which the most volume could trade. This would result in the CME conducting the auction at the market clearing price of $1.19. In this example, the remaining 20 units of the buy order would be subject to processing under Rule 6.91 (*e.g.,* remain in the Consolidated Book if not marketable against the individual orders and quotes in the Consolidated Book or other Electronic Complex Orders in the Consolidated Book, or execute if marketable subject to applicable priority and price-check parameters).

The opening auction process of the CME as described in proposed Rule 6.91(a)(2)(i)(B) is consistent with the opening auction process for Electronic Complex Orders at the CBOE.[9]

The Exchange is also proposing to adopt Rule 6.91(a)(2)(i)(C) to explain how Electronic Complex Orders that are not executed during the opening auction process are eligible to trade during Core Trading against the individual quotes and orders residing in the Consolidated Book of the series that comprise the complex order strategy. The processing of Electronic Complex Orders during Core Trading is done in accordance with Rules 6.91(a)(2)(i)–(iii), which the Exchange is proposing to renumber as Rules 6.91(a)(2)(ii)(A)–(C).

Consistent with the foregoing changes, the Exchange also proposes to re-number the remaining subsections of Rule 6.91(a)(i)–(iv) under a new section heading, ''Execution of Complex Orders During Core Trading,'' with no changes to the substance of the rule text.

Order Types and Contingencies Applicable to Electronic Complex Orders

The Exchange also proposes to amend and reorganize Rule 6.91(b), which explains the order types, contingencies and modifiers currently applicable to Electronic Complex Orders, as follows:

• The CME presently accepts only Limit Orders and Limit Orders designated as PNP Plus. The Exchange proposes to amend Rule 6.91(b) to codify this functionality. As proposed, Rule 6.91(b)(1) would state that Limit Orders[10] and Limit Orders designated as PNP Plus[11] are valid types of Electronic Complex Orders. Complex Limit Orders and Complex Limit Orders designated as PNP Plus are processed in the same manner as similarly marked single leg orders.

• Rule 6.91(b) provides that Electronic Complex Orders may be designated as Fill-or-Kill (''FOK'')[12] and All-or-None (''AON'').[13] The Exchange proposes to reorganize these contingencies under proposed Rule 6.91(b)(2). Electronic Complex Orders with a FOK or AON contingency are processed in the same manner as similarly marked single-leg orders.

• Rule 6.91(b) provides that Electronic Complex Orders may be entered with a time-in-force of IOC,[14] Day,[15] or Good-til-Cancel (''GTC'').[16] The Exchange proposes to reorganize these under proposed Rule 6.91(b)(3). Electronic Complex Orders with a time-in-force of IOC, Day or GTC are processed in the same manner as a similarly marked single leg orders.

Implementation

The Exchange will implement the proposed rule changes described above upon the implementation of technology updates applicable to the CME. The Exchange will announce the implementation date of the proposed rule change by Trader Update.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act[17] in general and furthers the objectives of Section 6(b)(5) of the Act[18] in particular in that it should promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

Specifically, the Exchange believes the proposed rule governing the opening auction process via the CME for Electronic Complex Orders increases opportunities for all types of market participants (*e.g.,* public customers, broker-dealers and market-makers) to participate in trading with Electronic Complex Orders. This participation may promote liquidity and result in better prices for customers throughout the trading day, including when the CME opens, which, in turn, protects investors and advances public interest.

In addition, the Exchange believes that codifying the available types of orders eligible to be entered as Electronic Complex Orders and reorganizing the variations of Electronic Complex Order types (*e.g.,* expanded contingencies and modifiers) available to market participants and listing those in a clear and precise structure will remove impediments to and perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. As noted above, the Exchange believes that expanding the variations of order types via contingencies and modifiers will encourage more Electronic Complex Orders to the Exchange, which is pro-competitive. Further the planned enhancement to provide a single price open, if possible, within the CME increases opportunities for all types of market participants (e.g., public customers, broker-dealers and market-makers) to participate in the trading of complex orders. This participation may promote liquidity and result in better prices for customers throughout the trading day, including when the CME opens. The Exchange does not believe that the changes proposed by this filing imposes any burden on other Exchanges as the most substantive change proposed, that being the complex order opening auction, is similar to functionality that is already available on at least one competing options Exchange.[19] The Exchange has found that when multiple Exchanges introduce similar functionality, other Exchanges move to enhance their own systems and product offerings, which are generally beneficial to all investors.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section

[9] *See* supra nn. 3, 4.

[10] *See* NYSE Arca Rule 6.62(b).

[11] *See* NYSE Arca Rule 6.62(y).

[12] *See* NYSE Arca Rule 6.62(l).

[13] *See* NYSE Arca Rule 6.62(d)(4).

[14] *See* NYSE Arca Rule 6.62(k).

[15] *See* NYSE Arca Rule 6.62(m).

[16] *See* NYSE Arca Rule 6.62(n).

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

[19] *See supra* nn. 3,4.

19(b)(3)(A)(iii) of the Act[20] and Rule 19b–4(f)(6) thereunder.[21] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[22]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[23] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2014–53 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2014–53. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room at 100 F Street NE., Washington, DC 20549–1090 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2014–53, and should be submitted on or before May 29, 2014

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–10539 Filed 5–7–14; 8:45 am]

BILLING CODE 8011–01–P

[20] 15 U.S.C. 78s(b)(3)(A)(iii).

[21] 17 CFR 240.19b–4(f)(6).

[22] 17 CFR 240.19b–4(f)(6)(iii). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[23] 15 U.S.C. 78s(b)(2)(B).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72078; File No. SR–C2–2014–002]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Qualification and Registration Requirements of Permit Holders and Associated Persons of Permit Holders

May 2, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 21, 2014, C2 Options Exchange, Incorporated (the ''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 3.4 (Qualification and Registration). The text of the proposed rule change is available on the Exchange's Web site (*http://www.c2exchange.com/Legal/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

C2 Rule 3.4 (Qualification and Registration) sets forth the requirements for registration and qualification of individual Permit Holders and individual associated persons of Permit Holders. This rule filing proposes to amend C2 Rule 3.4 in several respects and make C2's registration and qualification requirements consistent with Chicago Board Options Exchange, Incorporated's (''CBOE'') Rule 3.6A.[5]

First, C2 Rule 3.4(a)(1) provides that individual Permit Holders and individual associated persons engaged

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* CBOE Rule 3.6A.

or to be engaged in the securities business of a Permit Holder shall be registered with the Exchange in the category of registration appropriate to the function to be performed as prescribed by the Exchange. Additionally, C2 Rule 3.4(a)(1) provides that before the registration can become effective, the Permit Holder or individual associated person must pass a qualification examination appropriate to the category of registration in a form and manner prescribed by the Exchange. The Exchange proposes to clarify within the rule text that, in addition, the Permit Holder or individual associated person must also submit any required registration and examination fees. The Exchange believes that explicitly clarifying that Permit Holders must submit required registration and examination fees prior to any registration becoming effective reduces confusion as to what obligations Permit Holders have to satisfy prior to becoming properly registered.

C2 Rule 3.4(a)(1) also provides that a Permit Holder shall not maintain a registration with the Exchange for any person who no longer is active in the Permit Holder's securities business or where the sole purpose is to avoid an examination requirement. The Exchange proposes to provide that additionally, a Permit Holder shall not maintain a registration with the Exchange for any person who is no longer functioning in the registered capacity. Individual Permit Holders and associated persons are to be registered in the category appropriate to the function to be performed and accordingly, registrations for a specified capacity should not be maintained if the registered person no longer functions in that capacity. The Exchange believes that the proposed language explicitly requires registrations to accurately reflect the capacity in which the registered person performs.

Next, C2 Rule 3.4(a)(2) sets forth the types of individuals that are exempt from registration. C2 is proposing to amend this provision to include individual associated persons that are restricted from accessing the Exchange and that do not engage in the securities business of the Permit Holder relating to activity that occurs on the Exchange. The Exchange believes that these individuals do not need to be registered with the Exchange because these individuals do not access the Exchange directly and do not engage in the securities business of the Permit Holder relating to activity that occurs on the Exchange.

The Exchange also proposes to modify C2 Rule 3.4(a)(2) to exempt individual associated persons whose functions are related solely and exclusively to transactions in commodities and transactions in security futures, as well as those who effect transactions solely on the floor of another national securities exchange and who are registered as floor members with such exchange. The Exchange believes these registration exemptions are also appropriate because the Exchange would not consider individuals that fall into the exemptions to be actively engaged in securities business unless they are registered as floor members on another national securities exchange, in which case, they are already registered as floor members and would not be required to register at C2.[6] The Exchange also believes incorporating these additional exemptions into the rule provides clarity to Permit Holders and associated persons as to who will or will not be required to register.

Next, the Exchange is proposing to adopt C2 Rule 3.4(c) which requires the designation of a Chief Compliance Officer by a Permit Holder, which designation shall be updated on Schedule A of Form BD. Under the rule, the Chief Compliance Officer is required to register and pass the appropriate qualification examination as prescribed by the Exchange. The proposed rule will include a limited exemption from the requirement to pass the appropriate qualification examination by a Chief Compliance Officer. Specifically, a person that has been designated as a Chief Compliance Officer on Schedule A of Form BD for at least two years immediately prior to January 1, 2002 and who has not been subject within the last ten years to any statutory disqualification as defined in Section 3(a)(39) of the Act; a suspension; or the imposition of a $5,000 or more fine for a violation(s) of any provision of any securities law or regulation, or an agreement with, rule or standard of conduct of any securities governmental agency, securities self-regulatory organization (''SRO''), or as imposed by any such SRO in connection with a disciplinary proceeding, shall be required to register in the category of registration appropriate to the function to be performed as prescribed by the Exchange, but shall be exempt from the requirement to pass the heightened qualification examination as prescribed by the Exchange. The Exchange believes the proposed rule change will enhance Permit Holders' focus on compliance and supervision systems as well as ensure that all designated Chief Compliance Officers are appropriately trained and qualified. The Exchange also notes that the ''grandfathering'' provision (*i.e.,* allow certain chief compliance officers as described above to register and qualify as a Chief Compliance Officer without having to take the appropriate qualification examination) is consistent with other Exchanges' rules.[7] The Exchange similarly believes that a Chief Compliance Officer who has been continuously employed by an organization since 2002 and meets the delineated stringent qualifications noted above is appropriately qualified to continue to serve as a Chief Compliance Officer without having to take the heightened qualification examination.

The Exchange next proposes to amend C2 Rule 3.4(d) which describes the applicable associated person statuses under CBOE Chapter IX. The Exchange believes the current language of C2 Rule 3.4(d) may not make it explicitly clear that individual associated persons of a TPH organization that conducts a public customer business must also comply with the registration requirements set forth in Chapter IX of CBOE's Rules. Chapter IX is generally applicable to TPH organizations that conduct public customer business. Accordingly, the Exchange proposes to amend C2 Rule 3.4(d) to clarify that individual associated persons of a TPH organization that conducts a public customer business must comply with the registration requirements set forth in Chapter IX, as well as identify the additional registration categories (*i.e.,* Registered Options Principal and Registered Representative). The Exchange believes the proposed change will reduce confusion as to what obligations those associated persons have. The Exchange notes that the proposed new language of C2 Rule 3.4(d) is identical to CBOE Rule 3.6A(d).[8]

The Exchange also proposes to adopt C2 Rule 3.4(e) which sets forth the requirements for examinations where there is a lapse in registration. Specifically, an individual Permit Holder or individual associated person shall be required to pass the appropriate qualification examination for the category of registration if the individual Permit Holder's or individual associated person's registration has been revoked by the Exchange as a disciplinary sanction or whose most recent registration has been terminated for a period of two or more years. The Exchange believes that this proposed

[6] The Exchange notes that C2 is an all-electronic exchange and does not have a trading floor.

[7] *See e.g.,* NASD Rule 1022, CBOE Rule 3.6A, ISE Rule 313.

[8] *See* CBOE Rule 3.6A(d).

rule change helps meet the important goals of appropriate registration and qualification for all persons engaged in the securities business and ensures that all associated persons are up to date with respect to the securities industry and will continue to be properly registered, trained and qualified to perform their functions.

Next, the Exchange is proposing to modify Interpretations and Policies .01, .02, and .03 of C2 Rule 3.4 to remove existing references to those with ''an associated person status'' enumerated under paragraph (a) through (c) of Rule 3.4 and extend the applicability to all individual Permit Holders or individuals associated persons subject to registration requirements in Rule 3.4. The Exchange also proposes to amend Interpretation and Policy .03 to require that each individual required to register under Rule 3.4 satisfy the continuing education requirements set forth in Rule 9.3A and any other applicable continuing education requirements as prescribed by the Exchange. The Exchange believes these proposed changes also help to achieve the important goals of appropriate registration and qualification for all persons engaged in the securities business, as well as ensures that all associated persons are up to date with respect to the securities industry and will continue to be, properly registered, trained and qualified to perform their functions.

The Exchange proposes to adopt Interpretation and Policy .05 to codify in the rule what it means to be engaged in the securities business of a Permit Holder for purposes of this rule. Specifically, an individual Permit Holder or associated person will be considered to be a person engaged in the securities business of a Permit Holder if (i) the individual Permit Holder or individual associated person conducts proprietary trading, market-making, effects transactions on behalf of a broker-dealer, supervises or monitors proprietary trading, market-making, or brokerage activities on behalf the broker-dealer, supervises or conducts training of those engaged in proprietary trading, market-making, or brokerage activities on behalf of a broker-dealer account; or (ii) the individual Permit Holder or individual associated person engages in the management of one or more of the activities identified in (i) above as an officer, partner or a director. The Exchange believes incorporating this definition into the rule provides additional clarity to Permit Holders and associated persons as to who will or will not be considered to be a person engaged in the securities business of a Permit Holder, which will thereby reduce potential confusion.

The Exchange next seeks to add Interpretation and Policy .06 which requires registration and successful completion of a heightened examination by at least two individuals that are each an officer, partner or director of each Permit Holder that is a registered broker-dealer and has trading privileges on the Exchange. However, the Exchange notes that all individuals who engage in supervisory functions of the Permit Holder's securities business shall be required to register and pass the appropriate heightened qualification examination(s) relevant to the particular category of registration. Permit Holders that are sole proprietors will be exempt from this requirement. In addition, the Exchange may waive the requirement to have two officers, partners, and/or directors registered if a Permit Holder conclusively demonstrates that only one officer, partner or director should be required to register. For example, a Permit Holder could conclusively demonstrate that only one individual is required to register if such Permit Holder is owned by only one individual (such as a single member limited liability company), and such individual acts as the only trader on behalf of the Permit Holder and the Permit Holder employs only one other individual who functions only in a clerical capacity. The Exchange believes the proposed rule change helps to ensure that associated persons of Permit Holders are adequately and appropriately supervised, as well as ensures that those persons charged with such supervision are appropriately trained and qualified for their specific functions and responsibilities.

The Exchange is also proposing to allow Permit Holders that conduct proprietary trading only and have 25 or fewer registered persons to have only one officer or partner registered under this section, rather than two. This exception reflects that such Permit Holders do not necessitate the same level of supervisory structure as those Permit Holders that have customers or are larger in size. For purposes of Interpretation and Policy .06, a Permit Holder will be considered to conduct only proprietary trading if the Permit Holder has the following characteristics: (i) The Permit Holder is not required by Section 15(b)(8) of the Exchange Act to become a FINRA member but is a member of another registered securities exchange not registered solely under Section 6(g) of the Exchange Act; (ii) all funds used or proposed to be used by the Permit Holder are the Permit Holder's own capital, traded through the Permit Holder's own accounts; (iii) the Permit Holder does not, and will not, have customers; (iv) and all persons registered on behalf of the Permit Holder acting or to be acting in the capacity of a trader must be owners of, employees of, or contractors to the Permit Holder.

Next, the Exchange proposes to add Interpretation and Policy .07 which would require registration categories for Permit Holders that conduct proprietary trading, market-making and/or that effect transactions on behalf of broker dealers and specifies the acceptable qualification examinations (and related registration categories) for Permit Holders that conduct proprietary trading, market-making and/or that effect transactions on behalf of broker dealers. Specifically, as described above, C2 Rule 3.4(a) provides that individual Permit Holders and individual associated persons engaged or to be engaged in the securities business of a Permit Holder must be registered with the Exchange in the category of registration appropriate to the function to be performed as prescribed by the Exchange. More specifically, an individual Permit Holder and/or individual associated person who is engaged in the securities business of a Permit Holder will be required to register as a Proprietary Trader (PT) in WebCRD and pass the related qualification examination, the Series 56. An individual Permit Holder or individual associated person will be required to register as a Proprietary Trader Principal (TP) in WebCRD and pass the related qualification examination, the Series 24 (and be registered as a Proprietary Trader (PT) as a prerequisite to taking the Series 24) if such individual acts in any of the following capacities on behalf of a Permit Holder: (i) Officer; (ii) partner; (iii) director; (iv) supervisor of proprietary trading, market-making or brokerage activities; and/or (v) supervisor of those engaged in proprietary trading, market-making or brokerage activities with respect to those activities. Lastly, the Chief Compliance Officer (or individual performing similar functions) for a Permit Holder that engages in proprietary trading, market-making or effecting transactions on behalf of a broker-dealer will be required to register as a Proprietary Trader Compliance Officer (CT) in WebCRD and pass the related qualification examination, the Series 14 (and be registered as a Proprietary Trader (PT) as a prerequisite to taking the Series 14). The abovementioned registration categories

are consistent with recent changes to CBOE Rule 3.6A and other exchange rules regarding registration and qualification.[9] The Exchange believes these proposed rule changes are also important to ensure that all individual Permit Holders and associated persons of Permit Holders, including those engaging in transactions on the exchange and those supervising those engaging in transactions on the Exchange, are properly registered, trained and qualified to perform their functions. Additionally, the Exchange believes that the qualification examinations help ensure all associated persons engaged in a securities business are properly qualified for their specific functions as each of the abovementioned examinations address industry topics and regulatory and procedural knowledge relevant to the corresponding categories of registration. For example, the Exchange believes the Series 24 examination is an appropriate qualification examination for Proprietary Trader Principals as it tests the individual's knowledge and understanding of supervision-related rules. Finally, the Exchange notes that individuals must register in the category(ies) of registration appropriate to the function(s) to be performed as prescribed by the Exchange. For example, if an individual is to engage in proprietary trading and is also an officer of the Permit Holder, that individual must be registered as both a Proprietary Trader (PT) and Proprietary Trader Principal (TP).

The Exchange is also proposing to include a chart in Interpretation and Policy .07(b) to Rule 3.4 to identify the required registration categories, the applicable qualification examinations as set forth above and the alternative acceptable qualifications for each of the three registration categories referenced above. Specifically, the General Securities Representative (GS) registration (Series 7) will serve as an acceptable alternative qualification to obtain the Proprietary Trader (PT) registration. The Exchange believes this is an acceptable alternative as the Series 7 is a comprehensive exam that encompasses proprietary trading. Accordingly, it would be unnecessary and redundant for someone who maintained the General Securities Representative (GS) registration to have to also pass the Series 56 examination. The Exchange also notes that other SROs permit individuals who maintain the General Securities Representative (GS) registration (Series 7) to qualify for a Proprietary Trader (PT) registration and/or require the General Securities Representative (GS) registration (Series 7) to serve as the appropriate category of registration for proprietary traders.[10] Providing this alternative qualification avoids the imposition of duplicative examination requirements. Similarly, the General Securities Sales Supervisor registration (Series 9/10) and the General Securities Principal—Sales Supervisor Module registration (Series 23) collectively will serve as an alternative qualification to obtain the Proprietary Trader Principal (TP) registration. The Exchange notes that the Series 23 is designed to test a candidate's knowledge of the rules and statutory provisions applicable to the management of a broker-dealer. The Series 23 also covers material from the Series 24 examination that is not otherwise covered under the Series 9/10 examination and accordingly, the Exchange believes the Series 23 along with a General Securities Sales Supervisors registration is an alternative qualification. Moreover, the Exchange notes that other SROs permit the Series 23 as an alternative to the Series 24 for its members who are registered as General Securities Sales Supervisors and seeking to be registered and qualified as General Securities Principals.[11] In addition, the General Securities Principal (GP) registration (Series 24) or the Proprietary Trader Principal (TP) registration will serve as an alternative qualification to obtain the Proprietary Trader Compliance Officer (CT) registration. The Exchange notes that the Series 24 also establishes the skill and knowledge base necessary for a compliance official. The Exchange notes that acceptance of this alternative examination is consistent with other SROs' registration requirements[12] and that providing this alternative qualification avoids the imposition of duplicative examination requirements.

Finally, the Exchange proposes to adopt Interpretation and Policy .08 to state explicitly that any individual qualifying for a registration category pursuant to Rule 3.4 must satisfy all registration and qualification requirements prior to becoming engaged in the securities business of a Permit Holder or, as applicable, prior to acting in a capacity on behalf of a Permit Holder requiring such registration. While this requirement exists today, C2 is proposing to add this language to ensure that Permit Holders and applicable associated persons are reminded of their obligation to register and qualify all applicable associated persons prior to engaging in the securities business of the Permit Holder or, as applicable, prior to acting in a capacity on behalf of a Permit Holder requiring such registration. For example, if an existing employee who currently conducts a public customer business on behalf of the Permit Holder (and thus, maintains the General Securities Representative (GS) registration) wishes to engage in proprietary trading, that individual must be approved in WebCRD in the Proprietary Trader (PT) registration category prior to acting in the capacity of a proprietary trader on behalf of the Permit Holder.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[13] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[14] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[15] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

First, the Exchange believes the proposed rule changes enhance C2's registration and qualification requirements, as well as helps [sic] to ensure an effective supervisory structure for those conducting business on C2, which will provide additional protection to investors and further

[9] *See* Securities Exchange Act Release No. 67000 (May 16, 2012) 77 FR 30338 (May 22, 2012) (SR–CBOE–2012–039).

[10] *See e.g.,* CBOE Rule 3.6A and NASDAQ OMX PHLX Rule 613.

[11] *See e.g.,* CBOE Rule 3.6A. It is CBOE's understanding that FINRA also permits the Series 23 as an alternative to the Series 24 for its members who are registered as General Securities Sales Supervisors and who are seeking to register and qualify as General Securities Principals (*See http://www.finra.org/industry/compliance/registration/qualificationsexams/qualifications/p011051*).

[12] *See e.g.,* CBOE Rule 3.6A.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] *Id.*

promote the public interest. Additionally, the Exchange believes that the proposed rule changes are designed to not permit unfair discrimination among market participants, as the proposed changes are applicable to all similarly situated Permit Holders and associated persons of Permit Holders.

The Exchange also believes the proposed rule change is consistent with Section 6(c) of the Act, in general, and furthers the objectives of Section 6(c)(3) [16] of the Act, which authorizes C2 to prescribe standards of training, experience and competence for persons associated C2 Permit Holders, in that the proposed rule provides for registration and qualification requirements (including alternative acceptable qualifications) for C2 Permit Holders. C2 believes the proposed changes are reasonable and set forth the appropriate qualifications for individual Permit Holders and individual associated persons who are required to register under C2 Rule 3.4, including, but not limited to, Market-Makers, proprietary traders and individuals effecting transactions on behalf of other broker-dealers. Additionally, the Exchange believes that these requirements bolster the integrity of the Exchange by helping to ensure that all individual Permit Holders and associated persons engaged in a securities business are, and will continue to be, properly trained and qualified to perform their functions and can be identified by regulators, as well as be subject to continuing education requirements. C2 also believes the proposed rule change will enhance C2's ability to ensure an effective supervisory structure for those conducting business on C2.

B. Self-Regulatory Organization's Statement on Burden on Competition

C2 does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange does not believe the proposed rule change will pose any burden on intramarket competition because it is applied to similarly situated Permit Holders and associated persons of Permit Holders. Further, the Exchange does not believe that such change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule changes will promote uniformity of regulation across markets and help to make the Exchange's registration, qualification and continuing education requirements more consistent with the requirements of other SROs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [17] and Rule 19b–4(f)(6) thereunder.[18]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal will ensure that all individual Permit Holders and individual associated persons engaged or to be engaged in the securities business of a Permit Holder will be registered, qualified, and subject to continuing education requirements. Further, the proposal would render C2's Rule 3.4 substantially identical to CBOE Rule 3.6A, and it is substantially similar to previously submitted rule filings made by CBOE which have either been approved by the Commission or are now operative. Waiver of the delay would allow the Exchange to implement the proposed rule change, enabling C2's Permit Holders to comply with the registration, qualification and continuing education requirements without undue delay. Therefore, the Commission designates the proposal operative upon filing.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–C2–2014–002 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–C2–2014–002. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions

[16] 15 U.S.C. 78f(c)(3).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6).

[19] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

should refer to File Number SR–C2–2014–002, and should be submitted on or before May 29, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–10534 Filed 5–7–14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72083; File No. SR–ICC–2014–05]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change To Update ICC's Policy Regarding Valuation of Maturing U.S. Treasury Securities and Update ICC's Collateral Asset Haircut Methodology

May 2, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder[2] notice is hereby given that on April 22, 2014, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by ICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of this proposed rule change is to amend the ICC Clearing Rules (the ''Rules'') in order to update ICC's policy regarding valuation of maturing U.S. Treasury securities and update ICC's collateral asset haircut methodology.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ICC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of these statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed changes are intended to update ICC's policy regarding valuation of maturing U.S. Treasury securities and update ICC's collateral asset haircut methodology.

ICC believes such changes will facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which it is responsible. The proposed changes are described in detail as follows.

ICC is updating its policy regarding the valuation of maturing U.S. Treasury securities deposited to satisfy margin and guaranty fund requirements. ICC will reduce the collateral valuation of maturing securities to $0 two business days prior to maturity. This timing allows for collection of additional margin or guaranty fund, if required, prior to maturity. Clearing Participants will receive notice the week prior to any collateral maturity dates and will be encouraged to replace maturing securities with other acceptable collateral. If collateral matures while on deposit with ICC, proceeds will be credited to the margin or guaranty fund account, as appropriate, when received by ICC on the maturity day. In the past, ICC and other IntercontinentalExchange, Inc. clearing houses have applied this methodology when nearing the U.S. debt ceiling, and this update will provide consistent collateral valuation certainty at all times. Implementation of this policy will align ICC with other IntercontinentalExchange, Inc. clearing houses. ICC's Treasury Operations Policies and Procedures have been updated to reflect this change, and Clearing Participants will be notified via circular.

In order to provide consistency in the calculation of collateral asset haircuts among the IntercontinentalExchange, Inc. clearing houses, ICC is updating its Risk Management Framework. Currently at ICC, haircuts for relevant assets (e.g. U.S. Treasury securities and currencies) are calculated using a five-day liquidation period and a 99% confidence interval expected shortfall calculation. Under the updated collateral asset haircut methodology, the IntercontinentalExchange, Inc. clearing houses will calculate haircuts for relevant assets using the greater (which may be rounded to the nearest 1%), and hence more conservative, of: (i) The haircut determined using a five-day liquidation period and a 99% confidence interval expected shortfall calculation (currently used at ICC), and (ii) the haircut determined using a two day holding period and 99.9% confidence interval Value-at-Risk calculation. In practice, the more conservative five-day liquidation period and a 99% confidence interval expected shortfall calculation, currently used at ICC, will continue to be the driver of haircuts. Thus, the updated collateral asset haircut methodology will have no practical impact on ICC's haircut values. Furthermore, as applied to currencies, should ICC choose to use one haircut for a given foreign exchange pair (e.g. USD v. Euro, Euro v. USD), ICC will apply the more conservative haircut. The changes to the methodology for calculation of collateral asset haircuts do not require any operational changes.

Section 17A(b)(3)(F) of the Act[3] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions and to comply with the provisions of the Act and the rules and regulations thereunder. ICC believes that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICC, in particular, to Section 17(A)(b)(3)(F),[4] because ICC believes that the proposed rule changes will facilitate the prompt and accurate settlement of swaps and contribute to the safeguarding of securities and funds associated with swap transactions which are in the custody or control of ICC or for which it is responsible. The update to ICC's policy regarding valuation of maturing U.S. Treasury securities and the update to ICC's collateral asset haircut methodology provide consistency across the IntercontinentalExchange, Inc. clearing houses. ICC considers the update to its policy regarding valuation of maturing U.S. Treasury securities to be a risk reducing measure, providing consistent collateral valuation certainty at all times. ICC believes the update to its collateral asset haircut methodology assures that ICC will continue to apply the more conservative haircut of the two methodologies included in ICC's policy. As such, the proposed rule changes will facilitate the prompt and accurate settlement of swaps and contribute to the safeguarding of customer funds and securities within the control of ICC

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78q–1(b)(3)(F).

[4] Id.

within the meaning of Section 17A(b)(3)(F) [5] of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

ICC does not believe the proposed rule changes would have any impact, or impose any burden, on competition. The update to ICC's policy regarding valuation of maturing U.S. Treasury securities and the update to ICC's collateral asset haircut methodology apply uniformly across all market participants. Therefore, ICC does not believe the proposed rule changes impose any burden on competition that is inappropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–ICC–2014–05 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ICC–2014–05. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's Web site at *https://www.theice.com/notices/Notices.shtml?regulatoryFilings.*

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ICC–2014–05 and should be submitted on or before May 29, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–10537 Filed 5–7–14; 8:45 am]

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[5] Id.

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72087; File No. PCAOB–2013–03]

Public Company Accounting Oversight Board; Notice of Filing of Amendment No. 1, and Order Granting Accelerated Approval of Proposed Rules, Amendments To Conform the Board's Rules and Forms to the Dodd-Frank Act and Make Certain Updates and Clarifications, as Modified by Amendment No. 1

May 2, 2014.

I. Introduction

On December 23, 2013, the Public Company Accounting Oversight Board (the ''Board'' or the ''PCAOB'') filed with the Securities and Exchange Commission (the ''Commission''), pursuant to Section 107(b) [1] of the Sarbanes-Oxley Act of 2002 (the ''Sarbanes-Oxley Act'') and Section 19(b) [2] of the Securities Exchange Act of 1934 (the ''Exchange Act''), proposed amendments to conform the Board's rules and forms to the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act'') and make certain updates and clarifications (collectively, the ''Proposed Rules''). The Proposed Rules were published for comment in the **Federal Register** on February 3, 2014.[3] At the time the notice was issued, the Commission designated a longer period to act on the Proposed Rules, until May 5, 2014.[4] The Commission received one comment letter in response to the notice.[5] On March 13, 2014, the PCAOB filed Amendment No. 1 to the Proposed Rules (''Amendment No. 1'').[6] This order approves the Proposed Rules, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposed Rules

The Proposed Rules include specific references to audits and auditors of brokers and dealers in the Board's rules and are necessary to ensure that the

[1] 15 U.S.C. 7217(b).

[2] 15 U.S.C. 78s(b).

[3] *See* Release No. 34–71237 (January 6, 2014), 79 FR 6271 (February 3, 2014).

[4] Ibid.

[5] *See* letter to the Commission from Suzanne H. Shatto, dated March 6, 2014 (''Shatto Letter'').

[6] In Amendment No. 1, the PCAOB added amendments to Rule 3526, Communication with Audit Committees Concerning Independence. These amendments were discussed in the Proposed Rules, but the amendments to Rule 3526 were inadvertently omitted from the Proposed Rules. The Amendment also proposes a non-substantive modification to a cross-reference in Item 3.2.e.1 of Form 4.

PCAOB can satisfy its explicit oversight authority granted under the Dodd-Frank Act with respect to audits and auditors of brokers and dealer that are registered with the Commission. The Proposed Rules also conform the Board's rules to the Dodd-Frank amendments that: (1) Clarified the definition of ''person associated with a public accounting firm,'' [7] (2) permitted the Board to share certain information with foreign auditor oversight authorities,[8] and (3) clarified that the Board's sanctioning authority is not limited to persons who are supervisory personnel at the time a failure to supervise sanction is imposed.[9]

Beyond these conforming amendments, the Proposed Rules include three additional categories of amendments that tailor certain of the Board's rules to the audits of brokers and dealers, call for relevant broker and dealer audit client information on the Board's forms, and amend a number of rules in light of the Board's experience administering and enforcing these rules.

First, the PCAOB is tailoring the Board's professional practice standards to the audits of brokers and dealers. As amended, Rule 3521 (Contingent Fees), Rule 3522 (Tax Transactions) and Rule 3526 (Communication with Audit Committees Concerning Independence) apply to the audits of brokers and dealers to the same extent that they previously applied to the audits of issuers.

Second, the Board is amending its registration, withdrawal, and reporting forms (Forms 1, 1–WD, 2, 3, and 4), and the general instructions to these forms, to call for relevant broker and dealer audit client information. This information includes, among other things, information identifying each audit report issued by registered firms for broker and dealer audit clients during their annual reporting periods.

Finally, the Board is amending a number of rule provisions and form items in light of administrative experience and to make a number of updates to address events that have occurred since the last time the rules were updated. These amendments, for example, address circumstances where an issuer audit client encounters a change in its principal auditor and the issuer does not comply with the Commission's four business day reporting requirement concerning the change in auditors pursuant to Item 4.01 of Form 8–K.

In addition, Amendment No. 1 includes rule text for proposed amendments to Rule 3526 that was inadvertently omitted from the PCAOB's original rule filing and updates a cross-reference in Form 4 that would have become outdated by this Order.

The amendments to the PCAOB's rules, SEC Practice Section membership requirements, and Ethics Code will take effect on June 1, 2014. The amendments to Forms 1, 1–WD, 3, and 4 will take effect July 1, 2014. The amendments to Form 2 will take effect April 1, 2015.

III. Comment Letters

As noted above, the Commission received one comment letter concerning the Proposed Amendments, which expressed support for the Proposed Amendments.[10]

IV. The PCAOB's Emerging Growth Company Request

Section 103(a)(3)(C) of the Sarbanes-Oxley Act provides that any additional rules adopted by the PCAOB subsequent to April 5, 2012 do not apply to the audits of emerging growth companies (''EGCs''), unless the Commission determines that the application of such additional requirements is necessary or appropriate in the public interest, after considering the protection of investors and whether the action will promote efficiency, competition, and capital formation.[11] Having considered those factors, and as explained further below, the Commission finds that applying the Proposed Rules to audits of EGCs is necessary or appropriate in the public interest.

The PCAOB has proposed application of its Proposed Rules to audits of all issuers, as applicable, including EGCs; and the PCAOB requested that the Commission make the determination required by Section 103(a)(3)(C).[12] To assist the Commission in making its determination, the PCAOB prepared and submitted to the Commission its own EGC analysis. The PCAOB's EGC analysis was included in the Commission's public notice soliciting comment on the Proposed Rules. No comments were received on the analysis.

Based on the analysis submitted, we believe the information in the record is sufficient for the Commission to make the requested EGC determination in relation to the Proposed Rules. The PCAOB's EGC analysis discussed its approach to developing the Proposed Rules, as well as the characteristics of EGCs and economic considerations. For the Proposed Rules that are not simply conforming amendments, the PCAOB stated that it has no reason to think the economic consequences for EGCs would differ significantly from those for issuers who are not EGCs, and that it estimated that the cost-related implications of these amendments would not be significant. Finally, the Commission takes note of the PCAOB's statements that the Proposed Rules that were made in light of the PCAOB's administrative experience generally are expected to reduce existing compliance burdens, facilitate more efficient use of PCAOB resources, and maintain or improve meaningfulness of information required to be reported by registered firms to the PCAOB.

V. Solicitation of Comments on Amendment No. 1

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether Amendment No. 1 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/pcaob.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number PCAOB–2013–03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Kevin M. O'Neill, Deputy Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. PCAOB–2013–03. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/pcaob.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rules that are filed with the Commission, and all

[7] *See* Section 2(a)(9)(C) of the Sarbanes-Oxley Act.

[8] *See* Section 105(b)(5)(C) of the Sarbanes-Oxley Act.

[9] *See* Section 105(c)(6)(A) of the Sarbanes-Oxley Act.

[10] *See* Shatto Letter.

[11] Section 103(a)(3)(C) of the Sarbanes-Oxley Act, as amended by Section 104 of the Jumpstart Our Business Startups Act (the ''JOBS Act''). The term ''emerging growth company'' is defined in Section 3(a)(80) of the Exchange Act.

[12] To the extent that these proposed rules apply solely in connection with the obligations of registered brokers and dealers or the auditors of registered brokers and dealers pursuant to 17 CFR 240.17a–5, no separate determination is necessary under 15 U.S.C. 7213(a)(3)(C).

written communications relating to the proposed rules between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the PCAOB. All comments received will be posted without charge; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. PCAOB–2013–03 and should be submitted on or before May 29, 2014.

VI. Conclusion

The Commission has carefully reviewed and considered the Proposed Rules, as modified by Amendment No. 1, and the information submitted therewith by the PCAOB, including the PCAOB's EGC analysis. In connection with the PCAOB's filing and the Commission's review,

A. The Commission finds that the Proposed Rules, as modified by Amendment No. 1, are consistent with the requirements of the Sarbanes-Oxley Act and the securities laws and are necessary or appropriate in the public interest or for the protection of investors; and

B. Separately, the Commission finds that the application of the Proposed Rules, as modified by Amendment No. 1, to EGC audits as applicable is necessary or appropriate in the public interest, after considering the protection of investors and whether the action will promote efficiency, competition, and capital formation.

Additionally, the Commission finds good cause to approve the filing, as modified by Amendment No. 1 to the Proposed Rules, prior to the thirtieth day after the date of the publication of notice of the filing thereof in the **Federal Register**. The content of Amendment No. 1, which does not raise any novel issues, makes one technical amendment to the proposed rule to correct an inadvertent omission and one technical amendment to update a cross-reference in a Form that would become outdated if the proposed rules in the original rule filing are approved by the Commission. Accelerated approval would allow the PCAOB to update its rules immediately, thus providing users with greater clarity and certainty. Accordingly, the Commission finds that good cause exists to approve the filing, as modified by Amendment No. 1, on an accelerated basis.

It is therefore ordered, pursuant to Section 107 of the Act and Section 19(b)(2) of the Exchange Act, that the Proposed Rules (File No. PCAOB–2013–03), as modified by amendment No. 1, be and hereby are approved on an accelerated basis.

By the Commission.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–10543 Filed 5–7–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72089; File No. SR–EDGA–2014–12]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend EDGA Rule 11.5 Regarding the Route Peg Order

May 2, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 29, 2014, EDGA Exchange, Inc. (''EDGX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Route Peg Order under Rule 11.5(c)(14) to permit: (i) Executions against routable orders that are equal to or less than the aggregate size of the Route Peg Order interest available at that price; and (ii) Users [3] to add a minimum execution quantity instruction. All of the changes described herein are applicable to EDGA Members.

The text of the proposed rule change is available on the Exchange's Internet Web site at *www.directedge.com,* at the Exchange's principal office, and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Route Peg Order under Rule 11.5(c)(14) to permit: (i) Executions against routable orders that are equal to or less than the aggregate size of the Route Peg Order interest available at that price, which would replace the current requirement that routable orders be equal to or less than the size of an individual Route Peg Order; and (ii) Users to add a minimum execution quantity instruction.

A Route Peg Order is a non-displayed limit order that posts to the EDGA Book, and thereafter is eligible for execution at the national best bid (''NBB'') for buy orders and national best offer (''NBO'') for sell orders against routable orders that are equal to or less than the size of the Route Peg Order.[4] Route Peg Orders are passive, resting orders on the EDGA Book [5] and do not take liquidity. Route Peg Orders may be entered, cancelled, and cancelled/replaced prior to and during Regular Trading Hours.[6] Route Peg Orders are eligible for execution in a given security during Regular Trading Hours, except that, even after the commencement of Regular Trading Hours, Route Peg Orders are not eligible for execution (1) in the opening cross, and (2) until such time that regular session orders in that security can be posted to the EDGA Book. A Route Peg Order does not execute at a price that is inferior to a Protected Quotation, and is not be permitted to execute if the

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''User'' is defined as ''any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3.'' *See* Exchange Rule 1.5(ee).

[4] *See* Securities Exchange Act Release No. 67726 (August 24, 2012), 77 FR 52771 (August 30, 2012) (Order Approving the Route Peg Order).

[5] The ''EDGA Book'' is defined as ''the System's electronic file of orders.'' *See* Exchange Rule 1.5(d).

[6] ''Regular Trading Hours'' is defined as ''the time between 9:30 a.m. and 4:00 p.m. Eastern Time.'' *See* Exchange Rule 1.5(y).

NBBO is locked or crossed. Any and all remaining, unexecuted Route Peg Orders are cancelled at the conclusion of Regular Trading Hours.

Aggregate Size

As noted above, Route Peg Orders will currently only trade with routable orders that are equal to or smaller in quantity than the order quantity of an individual Route Peg Order. The Exchange proposes to amend the operation of the Route Peg Order to permit it to execute against routable orders that are equal to or less than the *aggregate* size of the Route Peg Order *interest available at that price.* The Exchange believes this change would incentivize Users seeking large size executions to route orders to the Exchange by increasing opportunities for executions against Route Peg Orders. This proposed change to the Route Peg Order is similar to the operation of the Nasdaq Stock Market LLC's (''Nasdaq'') Supplemental Order and NYSE Arca, Inc.'s (''NYSE Arca'') Tracking Order, which both only execute if the size of the incoming order is less than or equal to the aggregate size of Supplemental Order or Tracking Order interest available at that price.[7]

Minimum Execution Quantity

The Exchange also proposes to amend the Route Peg Order under Rule 11.5 to add optional functionality to allow Users to designate a minimum execution quantity. As proposed, a minimum execution quantity on a Route Peg order will no longer apply where the number of shares remaining after a partial execution are less than the minimum execution quantity. This proposed change is similar to the operation of NYSE Arca, Inc.'s Tracking Order, which permits Tracking Orders to include a minimum size requirement.[8] The Exchange believes that providing Users with the option to designate a minimum quantity for Route Peg Orders will promote the entry of liquidity at the Exchange because Users entering such orders will be assured of obtaining a larger sized execution. The Exchange believes that the proposed rule change could attract Users that are seeking larger executions to enter Route Peg Orders because by designating a minimum quantity, the submitting User would be assured that they are not traded against by smaller-sized interest.

Implementation Date

The Exchange will announce the effective date of the proposed rule change in a Trading Notice to be published no later than 30 days following publication of the proposed rule change by the Commission.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[9] in general, and furthers the objectives of Section 6(b)(5) of the Act[10] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

Aggregate Size

The Exchange believes that the proposal to permit executions against routable orders that are equal to or less than the aggregate size of the Route Peg Order interest available at that price would remove impediments to and perfect the mechanism of a free and open market and protect investors and the public interest because it would incentivize Users seeking large size executions to route orders to the Exchange by increasing opportunities for executions against Route Peg Orders in a manner similar to existing functionality available on Nasdaq and NYSE Arca.[11] The proposed rule change also encourages market participants to post liquidity at the NBBO on the Exchange through the use of Route Peg Orders, thereby promoting just and equitable principles of trade and removing impediments to and perfecting the mechanism of a free and open market and national market system. Moreover, the proposed rule changes would protect investors and the public interest by increasing the probability of an execution on the Exchange at the NBBO in the event that the order would otherwise be shipped to an external destination and potentially miss an execution at the NBBO while in transit. Lastly, the Exchange does not believe that this will permit unfair discrimination among customers, brokers, or dealers because it will be available to all Users.

Minimum Execution Quantity

The Exchange also believes its proposal to amend the Route Peg Order under Rule 11.5 to add optional functionality to allow Users to designate a minimum execution quantity removes impediments to and perfects the mechanism of a free and open market and protects investors and the public interest because it would provide an incentive for Members seeking larger-sized executions both to post liquidity at the Exchange using this feature and to route larger-sized orders to the Exchange because of the potential for an execution against such liquidity. The Exchange further believes that adding an optional minimum quantity would remove impediments to and perfect the mechanism of a free and open market system because the proposed functionality is similar to functionality available at the NYSE Arca.[12] The Exchange believes it is appropriate to provide an option for Users seeking to provide such liquidity to not only designate a minimum execution quantity, but for a minimum execution quantity on a Route Peg order to no longer apply where the number of shares remaining after a partial execution are less than the minimum execution quantity. Doing so would permit Users to continue to have their Route Peg Orders eligible for execution in such circumstances. In such case, Users will have the option to cancel their Route Peg Order if they wish.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the proposal will promote competition by enhancing the value of the Exchange's Route Peg Order by mirroring the function of similar order types offered by Nasdaq and NYSE Arca.[13]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

[7] *See* Nasdaq Rules 4751(f)(14), 4751(g) and 4757(a)(1)(D); *see also* NYSE Arca Rule 7.31(f).

[8] On NYSE Arca, if the Tracking Order with a minimum size requirement is executed but not exhausted and the remaining portion of the Tracking Order is less than the minimum size requirement, NYSE Arca would cancel the Tracking Order. *See* NYSE Arca Rule 7.31(f). *See also* Securities Exchange Act Release No. 71366 (January 22, 2014), 79 FR 4515 (January 28, 2014) (SR–NYSEArca–2014–01) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Equities Rule 7.31 to Add a Minimum Execution Size Designation for Tracking Orders).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] *See supra* note 8 and accompanying text.

[12] *See supra* note 9 [sic] and accompanying text.

[13] *See supra* notes 8 [sic] and 9 [sic] and accompanying text.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [14] and Rule 19b–4(f)(6) thereunder.[15] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [16] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EDGA–2014–12 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGA–2014–12. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–EDGA–2014–12 and should be submitted on or before May 29, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–10542 Filed 5–7–14; 8:45 am]

BILLING CODE 8011–01–P

[14] 15 U.S.C. 78s(b)(3)(A)(iii).

[15] 17 CFR 240.19b–4(f)(6).

[16] 15 U.S.C. 78s(b)(2)(B).

[17] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13959 and #13960]

Mississippi Disaster #MS–00072

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Mississippi (FEMA—4175—DR), dated 04/30/2014.

Incident: Severe storms, tornadoes, and flooding.

Incident Period: 04/28/2014 and continuing.

Effective Date: 04/30/2014.

Physical Loan Application Deadline Date: 06/30/2014.

Economic Injury (EIDL) Loan Application Deadline Date: 01/30/2015.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 04/30/2014, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Itawamba, Lee, Lowndes, Madison, Rankin, Wayne, Winston.

Contiguous Counties (Economic Injury Loans Only):

Mississippi: Attala, Chickasaw, Choctaw, Clarke, Clay, Copiah, Greene, Hinds, Holmes, Jasper, Jones, Kemper, Leake, Monroe, Neshoba, Noxubee, Oktibbeha, Perry, Pontotoc, Prentiss, Scott, Simpson, Smith, Tishomingo, Union Yazoo.

Alabama: Choctaw, Franklin, Lamar, Marion, Pickens, Washington.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	4.375
Homeowners without Credit Available Elsewhere	2.188
Businesses with Credit Available Elsewhere	6.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	2.625
Non-Profit Organizations without Credit Available Elsewhere	2.625
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 13959C and for economic injury is 139600.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2014–10557 Filed 5–7–14; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13961 and #13962]

Washington Disaster #WA–00041

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Washington (FEMA–4168–DR), dated 04/30/2014.

Incident: Flooding and Mudslides.

Incident Period: 03/22/2014 through 04/28/2014.

Effective Date: 04/30/2014.

Physical Loan Application Deadline Date: 06/30/2014.

Economic Injury (EIDL) Loan Application Deadline Date: 01/30/2015.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 04/30/2014, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties/Areas: Snohomish and the Sauk-Suiattle, Stillaguamish, and Tulalip Tribes.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere ...	2.625
Non-Profit Organizations Without Credit Available Elsewhere	2.625
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 139619 and for economic injury is 139629.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2014–10555 Filed 5–7–14; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13938 and #13939]

Tennessee Disaster Number TN–00079

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Tennessee (FEMA—4171—DR), dated 04/11/2014.

Incident: Severe Winter Storm.

Incident Period: 03/02/2014 through 03/04/2014.

Effective Date: 04/30/2014.

Physical Loan Application Deadline Date: 06/10/2014.

Economic Injury (EIDL) Loan Application Deadline Date: 01/12/2015.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Tennessee, dated 04/11/2014, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Fayette, Hickman.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2014–10550 Filed 5–7–14; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13924 and #13925]

Washington Disaster Number WA–00039

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Washington (FEMA—4168—DR), dated 04/02/2014.

Incident: Flooding and mudslides.

Incident Period: 03/22/2014 through 04/28/2014.

Effective Date: 04/28/2014.

Physical Loan Application Deadline Date: 06/02/2014.

EIDL Loan Application Deadline Date: 01/02/2015.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Washington, dated 04/02/2014 is hereby amended to establish the incident period for this disaster as beginning 03/22/2014 and continuing through 04/28/2014.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2014–10551 Filed 5–7–14; 8:45 am]

BILLING CODE 8025–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Commission Meeting

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: The Susquehanna River Basin Commission will hold its regular business meeting on June 5, 2014, in Entriken, Pennsylvania. Details concerning the matters to be addressed at the business meeting are contained in the Supplementary Information section of this notice.

DATES: June 5, 2014, at 9:00 a.m.

ADDRESSES: Lake Raystown Resort, Lodge & Conference Center, River Birch Ballroom, 3101 Chipmunk Crossing, Entriken, PA 16638.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: (717) 238–0423, ext. 1306; fax: (717) 238–2436.

SUPPLEMENTARY INFORMATION: The business meeting will include actions or presentations on the following items: (1) Informational presentation on the Raystown Lake project; (2) election of officers for FY–2015; (3) settlement agreement pertaining to Federal Energy Regulatory Commission (FERC) licensing of hydroelectric dams; (4) the proposed Water Resources Program for fiscal years 2015 and 2016; (5) an American Eel Restoration Plan; (6) amending the Comprehensive Plan for the Water Resources of the Susquehanna River Basin; (7) amending the Commission's Records Processing Fee Schedule; (8) amending the Commission's Regulatory Program Fee Schedule; (9) adoption of a FY–2016 budget; (10) ratification/approval of contracts/grants; (11) regulatory compliance matters for Somerset Regional Water Resources, LLC; Susquehanna Gas Field Services LLC; and Tioga Downs Racetrack, LLC; and (12) Regulatory Program projects. Projects, proposed amendments to fee schedules, and amendments to the comprehensive plan listed for Commission action are those that were the subject of a public hearing conducted by the Commission on May 8, 2014, and identified in the notice for such hearing, which was published in 79 FR 20961, April 14, 2014.

Opportunity to Appear and Comment:

Interested parties are invited to attend the business meeting and encouraged to review the Commission's Public Meeting Rules of Conduct, which are posted on the Commission's Web site, *www.srbc.net.* As identified in the public hearing notice referenced above, written comments on the Regulatory Program projects, proposed amendments to fee schedules, and amendments to the Comprehensive Plan that were the subject of the public hearing, and are listed for action at the business meeting, are subject to a comment deadline of May 19, 2014.Written comments pertaining to any other matters listed for action at the business meeting may be mailed to the Susquehanna River Basin Commission, 4423 North Front Street Harrisburg, Pennsylvania 17110–1788, or submitted electronically through *http://www.srbc.net/pubinfo/publicparticipation.htm.* Any such comments mailed or electronically submitted must be received by the Commission on or before May 30, 2014, to be considered.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR Parts 806, 807, and 808.

Dated: May 2, 2014.

Stephanie L. Richardson,

Secretary to the Commission.

[FR Doc. 2014–10565 Filed 5–7–14; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Peoria, Tazewell, and Woodford Counties, Illinois

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a Tier 1 Environmental Impact Statement will be prepared for the Eastern Bypass Study in Peoria, Tazewell, and Woodford Counties in Illinois.

FOR FURTHER INFORMATION CONTACT: Catherine A. Batey, Division Administrator, Federal Highway Administration, 3250 Executive Park Drive, Springfield, Illinois 62703, Phone: (217) 492–4600. Joseph E. Crowe, P.E., Deputy Director of Highways, Region 3 Engineer, Illinois Department of Transportation, 401 Main Street, Peoria, Illinois 61602, Phone: (309) 671–3333.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Illinois Department of Transportation (IDOT), will prepare a Tier 1 Environmental Impact Statement (EIS) for the proposed Eastern Bypass Study. The anticipated project termini are Interstate 74, east of the city of East Peoria, and Illinois Route 6, north of the city of Peoria. The study area covers approximately 200 square miles in Peoria, Tazewell, and Woodford Counties in Illinois. The project is being considered in order to improve vehicular mobility and access across the Illinois River and between Tazewell and Woodford Counties.

The Tier 1 EIS will evaluate alternatives including a No Action Alternative, transportation system management strategies, existing or new transit improvements, and various Build Corridor Alternatives. The No Action Alternative will draw upon highway improvements already planned in the study area. The Tier 1 EIS will develop and evaluate a range of reasonable Build Corridor Alternatives, including a new crossing of the Illinois River, within which the proposed project could be constructed. The Build Alternatives will be developed at a corridor level and will address transportation and social benefits, environmental and social impacts, and other possible effects. The Tier 1 EIS will conclude with a Record of Decision identifying one or more corridors that can encompass one or more transportation alternatives to be studied in subsequent Tier 2 NEPA documents.

The Tier 1 EIS will evaluate potential effects on the social, economic, and physical environment, including land use and socioeconomic conditions, ecological resources, and cultural resources, at a corridor level commensurate with a Tier 1 EIS. Potentially affected resources include: agricultural, residential, commercial, and industrial properties; streams, wetlands and floodplains; woodlands, park land, natural areas, and land and water reserves; and historic properties.

A scoping meeting for the Tier 1 EIS was held on November 1, 2012, in Peoria, Illinois to obtain input from resource agencies on the level of detail and methodologies to be used in the tiered EIS process. Additional comments and suggestions are invited from all interested parties regarding the scope of the Tier 1 EIS to ensure all issues related to this proposal are addressed and that any significant impacts are identified.

To ensure all substantive issues related to this proposal are identified and addressed, the study will be conducted using Context Sensitive Solutions Policy and will include the development of a Stakeholder Involvement Plan (SIP). The SIP will outline public involvement activities to be included in the study. Public informational meetings, local government meetings, newsletters, and a project Web site will provide opportunities for public input. A public hearing will be held at the time the draft EIS is made available for public and agency review and comment. Public notice will be given of the time and place of public meetings and hearings. Comments or questions regarding this proposed action and the Tier 1 EIS are invited from all interested parties and should be directed to the FHWA or the Illinois Department of Transportation at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: May 2, 2014.

Glenn D. Fulkerson,

Assistant Division Administrator, Federal Highway Administration, Springfield, Illinois.

[FR Doc. 2014–10566 Filed 5–7–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Cook County, Illinois

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Cook County, Illinois.

FOR FURTHER INFORMATION CONTACT: Catherine A. Batey, Division Administrator, Federal Highway Administration, 3250 Executive Park Drive, Springfield, Illinois 62703, Phone: (217) 492–4600. John Fortmann, P.E., Deputy Director of Highways, Region One Engineer, District 1, Illinois Department of Transportation, 201 W. Center Court, Schaumburg, IL 60196–1096, Phone: (847) 705–4110.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Illinois Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal to improve North Lake Shore Drive located in the Illinois county of Cook. The project study area encompasses North Lake Shore Drive from Grand Avenue to Hollywood Avenue where North Lake Shore Drive terminates at the intersection of Hollywood Avenue and Sheridan Road. The section of North Lake Shore Drive from Grand Avenue to Foster Avenue is designated as U.S. Route 41. North of Foster Avenue, North Lake Shore Drive is an unmarked State route.

Improvements to the corridor are considered necessary due to safety concerns and operational issues as well as infrastructure condition. Alternatives that may be considered include (1) taking no action; and (2) a full range of multi-modal build alternatives that involve the reconstruction of North Lake Shore Drive.

Improvements to North Lake Shore Drive have the potential to affect environmental features in the project area. Almost the entire length of the roadway is located within historic Lincoln Park, where no roadway right-of-way exists. All land beyond the backs of curbs is considered to be park land. Potential environmental issue areas include: parks, special waste sites, historic bridges, historic buildings, air quality, noise, natural resources, water resources and related indirect and cumulative impact considerations.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies. As part of the EIS process, a scoping meeting for obtaining input from Resource Agencies was held on September 19, 2013. The Illinois Department of Transportation's Context Sensitive Solutions (CSS) process will be used for public involvement. A Stakeholder Involvement Plan (SIP) will be developed to ensure that the full range of issues related to this proposed project are identified and addressed. The SIP provides meaningful opportunities for all stakeholders to participate in defining transportation issues and solutions for the study area. One public meeting will be held in Cook County at each project milestone. In addition to the public meetings, a public hearing and comment period will be held following the release of the Draft EIS. Public notice will be given for the time and place of the public meetings and hearing. A project Web site has been established (*www.northlakeshoredrive.org*) as one element of the project public involvement process.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: May 2, 2014.

Glenn D. Fulkerson,

Assistant Division Administrator, Springfield, Illinois.

[FR Doc. 2014–10563 Filed 5–7–14; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Limitation on Claims Against Proposed Public Transportation Projects

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice.

SUMMARY: This notice announces final environmental actions taken by the Federal Transit Administration (FTA) for projects in the following locations: Boise, ID and Houston, TX. The purpose of this notice is to announce publicly the environmental decisions by FTA on the subject projects and to activate the limitation on any claims that may challenge these final environmental actions.

DATES: By this notice, FTA is advising the public of final agency actions subject to Section 139(l) of Title 23, United States Code (U.S.C.). A claim seeking judicial review of FTA actions announced herein for the listed public transportation projects will be barred unless the claim is filed on or before October 6, 2014.

FOR FURTHER INFORMATION CONTACT: Nancy-Ellen Zusman, Assistant Chief Counsel, Office of Chief Counsel, (312) 353–2577 or Terence Plaskon, Environmental Protection Specialist, Office of Human and Natural Environment, (202) 366–0442. FTA is located at 1200 New Jersey Avenue SE., Washington, DC 20590. Office hours are from 9:00 a.m. to 5:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Notice is hereby given that FTA has taken final agency actions by issuing certain approvals for the public transportation projects listed below. The actions on the projects, as well as the laws under which such actions were taken, are described in the documentation issued in connection with the project to comply with the National Environmental Policy Act (NEPA) and in other documents in the FTA administrative record for the projects. Interested parties may contact either the project sponsor or the relevant FTA Regional Office for more information on the project. Contact information for FTA's Regional Offices may be found at *http://www.fta.dot.gov.*

This notice applies to all FTA decisions on the listed projects as of the issuance date of this notice and all laws under which such actions were taken, including, but not limited to, NEPA [42 U.S.C. 4321–4375], Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303], Section 106 of the

National Historic Preservation Act [16 U.S.C. 470f], and the Clean Air Act [42 U.S.C. 7401–7671q]. This notice does not, however, alter or extend the limitation period for challenges of project decisions subject to previous notices published in the **Federal Register**. The projects and actions that are the subject of this notice are:

1. *Project name and location:* Downtown Boise Multimodal Center, Boise, ID. *Project sponsor:* Valley Regional Transit. *Project description:* The proposed project consists primarily of an underground facility with eight bus bays and dedicated entry and exit ramps for buses. The facility would be complemented by four reconfigured bus bays on Main Street, for a total of 12 bus bays. The underground facility is to be built as part of a new office, convention, and retail development on the west side of the U.S. Bank Building near the corner of North 8th Street and Main Street. *Final agency actions:* No use determination of Section 4(f) resources; Section 106 finding of no historic properties affected; project-level air quality conformity; and Finding of No Significant Impact (FONSI), dated April 23, 2014. *Supporting documentation:* Environmental Assessment, dated March 2014.

2. *Project name and location:* Post Oak Boulevard Reconstruction with Dedicated Bus Lanes, Houston, TX. *Project sponsor:* Uptown Houston District. *Project description:* The proposed project would reconstruct and make improvements to Post Oak Boulevard from IH 610 to Richmond Avenue. The reconstructed street would retain six lanes for general traffic while accommodating bi-directional bus service operating in dedicated lanes in the expanded median. Improvements would be made to sidewalks, landscape/hardscape, pedestrian lighting, and other pedestrian amenities. *Final agency actions:* Section 106 finding of no historic properties affected and determination of categorical exclusion. *Supporting documentation:* Categorical exclusion pursuant to 23 CFR 771.118(d), dated March 26, 2014.

Lucy Garliauskas,

Associate Administrator Planning and Environment.

[FR Doc. 2014–10549 Filed 5–7–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2013–0002 (Notice No. 14–6)]

Information Collection Activities

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Requests (ICR) abstracted below will be forwarded to the Office of Management and Budget (OMB) for review and comments. The ICRs describe the nature of the information collections and their expected burden. A **Federal Register** Notice with a 60-day comment period soliciting comments on these collections of information was published in the **Federal Register** on February 12, 2014 [79 FR 8535] under Docket No. PHMSA–2013–0002 (Notice No. 14–1). PHMSA did not receive any comments in response to February 12, 2014 notice.

DATES: Interested persons are invited to submit comments on, or before June 9, 2014.

ADDRESSES: Interested parties are invited to submit comments regarding this notice. Comments should refer to the information collection by title and/or OMB Control Number. Send comments regarding the burden estimate, including suggestions for reducing the burden, to OMB, Attention: Desk Officer for PHMSA, 725 17th Street NW., Washington, DC 20503. Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the Department's estimate of the burden of the proposed information collection; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Steven Andrews or T. Glenn Foster, Standards and Rulemaking Division (PHH–12), U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE., East Building, 2nd Floor, Washington, DC 20590–0001, Telephone (202) 366–8553.

SUPPLEMENTARY INFORMATION: Section 1320.8 (d), Title 5, Code of Federal Regulations requires Federal agencies to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies information collection requests that PHMSA will be submitting to OMB for renewal and extension. These information collections are contained in 49 CFR parts 107, 130, 171, 173, 176, 177, 178, and 180 of the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180). PHMSA has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on changes in proposed or final rules published since the information collections were last approved. The following information is provided for each information collection: (1) Title of the information collection, including former title if a change is being made; (2) OMB Control Number; (3) abstract of the information collection activity; (4) description of affected persons; (5) estimate of total annual reporting and recordkeeping burden; and (6) frequency of collection. PHMSA will request a three-year term of approval for each information collection activity and, when approved by OMB, publish notice of the approvals in the **Federal Register**.

PHMSA requests comments on the following information collections:

Title: Requirements for Cargo Tanks.

OMB Control Number: 2137–0014.

Summary: This information collection consolidates and describes the information collection provisions in Parts 107, 178, and 180 of the HMR involving the manufacture, qualification, maintenance, and use of all specification cargo tank motor vehicles. It also includes the information collection and recordkeeping requirements for persons who are engaged in the manufacture, assembly, requalification, and maintenance of Department of Transportation (DOT) specification cargo tank motor vehicles. The types of information collected include:

(1) Registration Statements: Cargo tank manufacturers and repairers, and cargo tank motor vehicle assemblers are required to be registered with DOT by furnishing information relative to their qualifications to perform the functions in accordance with the HMR. The

registration statements are used to identify these persons in order for DOT to ensure they possess the knowledge and skills necessary to perform the required functions, and that they are performing the specified functions in accordance with the applicable regulations.

(2) Requalification and maintenance reports: These reports are prepared by persons who requalify or maintain cargo tanks. This information is used by cargo tank owners, operators and users, and DOT compliance personnel to verify that the cargo tanks are requalified, maintained, and are in proper condition for the transportation of hazardous materials.

(3) Manufacturers' data reports, certificates, and related papers: These reports are prepared by cargo tank manufacturers and certifiers, and are used by cargo tank owners, operators, users and DOT compliance personnel to verify that a cargo tank motor vehicle was designed and constructed to meet all requirements of the applicable specification.

Affected Public: Manufacturers, assemblers, repairers, requalifiers, certifiers, and owners of cargo tanks.

Annual Reporting and Recordkeeping Burden

Number of Respondents: 41,366.
Total Annual Responses: 132,600.
Total Annual Burden Hours: 101,507.
Frequency of Collection: On occasion.
Title: Hazardous Materials Incident Reports.
OMB Control Number: 2137–0039.
Summary: This information collection is applicable upon occurrence of incidents as prescribed in §§ 171.15 and 171.16. A Hazardous Materials Incident Report, DOT Form F 5800.1, must be completed by a person in physical possession of a hazardous material at the time a hazardous material incident occurs in transportation, such as a release of materials, serious accident, evacuation, or closure of a major transportation artery. Incidents meeting criteria in § 171.15 also require a telephonic report. This information collection enhances the Department's ability to evaluate the effectiveness of its regulatory program, determine the need for regulatory changes, and address emerging hazardous materials transportation safety issues. The requirements apply to all interstate and intrastate carriers engaged in the transportation of hazardous materials by rail, air, water, and highway.
Affected Public: Shippers and carriers of hazardous materials.

Annual Reporting and Recordkeeping Burden

Number of Respondents: 1,781.
Total Annual Responses: 17,810.
Total Annual Burden Hours: 23,746.
Frequency of collection: On occasion.
Title: Flammable Cryogenic Liquids.
OMB Control Number: 2137–0542.
Summary: Provisions in § 177.840(a)(2) specify certain safety procedures and documentation requirements for drivers of motor vehicles transporting flammable cryogenic liquids. This information allows the driver to take appropriate remedial actions to prevent a catastrophic release of the flammable cryogenics should the temperature of the material begin to rise excessively or if the travel time will exceed the safe travel time. These requirements are intended to ensure a high level of safety when transporting flammable cryogenics due to their extreme flammability and high compression ratio when in a liquid state.
Affected Public: Carriers of cryogenic materials.

Annual Reporting and Recordkeeping Burden

Total Respondents: 65.
Total Annual Responses: 18,200.
Total Annual Burden Hours: 1,213.
Frequency of collection: On occasion.
Title: Container Certification Statement.
OMB Control Number: 2137–0582.
Summary: Shippers of explosives, in freight containers or transport vehicles by vessel, are required to certify on shipping documentation that the freight container or transport vehicle meets minimal structural serviceability requirements. This requirement is intended to ensure an adequate level of safety for transport of explosives aboard vessel and consistency with similar requirements in international standards.
Affected Public: Shippers of explosives in freight containers or transport vehicles by vessel.

Annual Reporting and Recordkeeping Burden

Annual Respondents: 650.
Annual Responses: 890,000.
Annual Burden Hours: 14,908.
Frequency of collection: On occasion.
Title: Response Plans for Shipments of Oil.
OMB Control Number: 2137–0591.
Summary: In recent years, several major oil discharges damaged the marine environment of the United States. Under authority of the Federal Water Pollution Control Act, as amended by the Oil Pollution Act of 1990, PHMSA issued regulations in 49 CFR Part 130 that require preparation of written spill response plans.
Affected Public: Carriers that transport oil in bulk, by motor vehicle or rail.

Annual Reporting and Recordkeeping Burden

Annual Respondents: 8,000.
Annual Responses: 8,000.
Annual Burden Hours: 10,560.
Frequency of collection: On occasion.
Title: Hazardous Materials Security Plans.
OMB Control Number: 2137–0612.
Summary: To assure public safety, shippers and carriers must take reasonable measures to plan and implement procedures to prevent unauthorized persons from taking control of, or attacking, hazardous materials shipments. Part 172 of the HMR requires persons who offer or transport certain hazardous materials to develop and implement written plans to enhance the security of hazardous materials shipments. The security plan requirements, as prescribed in § 172.800(b) applies to specific types of shipments. Such shipments include but are not limited to shipments greater than 3,000 kg (6,614 pounds) for solids or 3,000 liters (792 gallons) for liquids and gases in a single packaging such as a cargo tank motor vehicle, portable tank, tank car, or other bulk container; any quantity of a Division 1.1, 1.2, or 1.3 material; a large bulk quantity of a Division 2.1 material; or any quantity of a poison by inhalation material. A security plan will enable shippers and carriers to reduce the possibility that a hazardous materials shipment will be used as a weapon of opportunity by a terrorist or criminal.
Affected Public: Shippers and carriers of hazardous materials in commerce.

Annual Reporting and Recordkeeping Burden

Number of Respondents: 54,999.
Total Annual Responses: 54,999.
Total Annual Burden Hours: 427,719.
Frequency of collection: On occasion.
Title: Inspection and Testing of Meter Provers.
OMB Control Number: 2137–0620.
Summary: This information collection and recordkeeping burden results from the requirements pertaining to the use, inspection, and maintenance of mechanical displacement meter provers (meter provers) used to check the accurate flow of liquid hazardous materials into bulk packagings, such as portable tanks and cargo tank motor vehicles, under the HMR. These meter provers are used to ensure that the

amount of liquid hazardous materials being measured during load and unloading of bulk packagings is accurate. These meter provers consist of a gauge and several pipes that always contain small amounts of the liquid hazardous material in the pipes as residual material, and, therefore, must be inspected and maintained in accordance with the HMR to ensure they are in proper calibration and working order. These meter provers are not subject to the specification testing and inspection requirements in Part 178. However, these meter provers must be visually inspected annually and hydrostatic pressure tested every five years in order to ensure they are properly working as specified in § 173.5a of the HMR. Therefore, this information collection requires that:

(1) Each meter prover must undergo and pass an external visual inspection annually to ensure that the meter provers used in the flow of liquid hazardous materials into bulk packagings are accurate and in conformance with the performance standards in the HMR.

(2) Each meter prover must undergo and pass a hydrostatic pressure test at least every five years to ensure that the meter provers used in the flow of liquid hazardous materials into bulk packagings are accurate and in conformance with the performance standards in the HMR.

(3) Each meter prover must successfully complete the test and inspection and must be marked in accordance with 173.5a.

(4) Each owner must retain a record of the most recent visual inspection and pressure test until the meter prover is requalified.

Affected Public: Owners of meter provers used to measure liquid hazardous materials flow into bulk packagings such as cargo tanks and portable tanks.

Annual Reporting and Recordkeeping Burden

Number of Respondents: 50.
Total Annual Responses: 250.
Total Annual Burden Hours: 175.
Frequency of collection: On occasion.

Title: Requirements for United Nations (UN) Cylinders.

OMB Control Number: 2137–0621.

Summary: This information collection and recordkeeping burden is the result of efforts to amend the HMR to adopt standards for the design, construction, maintenance, and use of cylinders and multiple-element gas containers (MEGCs) based on the standards contained in the United Nations (UN) Recommendations on the Transport of Dangerous Goods. Aligning the HMR with the UN Recommendations promotes flexibility, permits the use of technological advances for the manufacture of the pressure receptacles, provides for a broader selection of pressure receptacles, reduces the need for special permits, and facilitates international commerce in the transportation of compressed gases. Information collection requirements address domestic and international manufacturers of cylinders that request approval by the approval agency for cylinder design types. The approval process for each cylinder design type includes review, filing, and recordkeeping of the approval application. The approval agency is required to maintain a set of the approved drawings and calculations for each design it reviews and a copy of each initial design type approval certificate approved by the Associate Administrator for not less than 20 years.

Affected Public: Fillers, owners, users, and retesters of UN cylinders.

Annual Reporting and Recordkeeping Burden

Number of Respondents: 50.
Total Annual Responses: 150.
Total Annual Burden Hours: 900.
Frequency of collection: On occasion.

Dated: May 5, 2014.

Charles E. Betts,

Director, Standards and Rulemaking Division.

[FR Doc. 2014–10575 Filed 5–7–14; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Senior Executive Service Performance Review Board (PRB) and Executive Resources Board (ERB) Membership

AGENCY: Surface Transportation Board, DOT.

ACTION: Senior Executive Service Performance Review Board (PRB) and Executive Resources Board (ERB) Membership.

SUMMARY: Effective immediately, the membership of the PRB and ERB is as follows:

Performance Review Board

Leland L. Gardner, Chairman
Rachel D. Campbell, Member
Craig M. Keats, Member
Lucille Marvin, Alternate Member

Executive Resources Board

Rachel D. Campbell, Chairman
Lucille Marvin, Member
Joseph H. Dettmar, Member
Craig M. Keats, Alternate Member

FOR FURTHER INFORMATION CONTACT: If you have any questions regarding this matter, please contact Paula Chandler at 202–245–0340.

Dated: May 1, 2014.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2014–10598 Filed 5–7–14; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Amerisure Insurance Company, Amerisure Partners Insurance Company

AGENCY: Bureau of the Fiscal Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 9 to the Treasury Department Circular 570, 2013 Revision, published July 1, 2013, at 78 FR 39440.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued under 31 U.S.C. 9305 to the following companies:

Amerisure Insurance Company (NAIC #19488)

Business Address: P.O. Box 2060, Farmington Hills, MI 48331–3586.

Phone: (248) 615–9000. *Underwriting Limitation* b/: $21,566,000. *Surety Licenses* c/: AL, AK, AZ, AR, CO, DC, DE, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. *Incorporated In:* Michigan.

Amerisure Partners Insurance Company (NAIC #11050)

Business Address: P.O. Box 2060, Farmington Hills, MI 48331–3586.

Phone: (248) 615–9000. *Underwriting Limitation* b/: $2,215,000. *Surety Licenses* c/: AL, AK, AZ, AR, CO, DE, DC, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE., NV, NM, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. *Incorporated In:* Michigan.

Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570

(''Circular''), 2013 Revision, to reflect these additions.

Certificates of Authority expire on June 30th each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (*see* 31 CFR part 223). A list of qualified companies is published annually as of July 1st in the Circular, which outlines details as to the underwriting limitations, areas in which companies are licensed to transact surety business, and other information.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570*.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Bureau of the Fiscal Service, Financial Accounting and Services Branch, Surety Bond Branch, 3700 East-West Highway, Room 6F01, Hyattsville, MD 20782.

Dated: May 1, 2014.

Kevin McIntyre,

Manager, Financial Accounting and Services Branch.

[FR Doc. 2014–10588 Filed 5–7–14; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0418]

Agency Information Collection (VAAR Section 809.504(d), and Clause 852.209–70) Under OMB Review

AGENCY: Office of Management, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Office of Management (OM), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before June 9, 2014.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0418'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492 or email *crystal.rennie@va.gov*. Please refer to ''OMB Control No. 2900–0418.''

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, OM invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of OM's functions, including whether the information will have practical utility; (2) the accuracy of OM's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Department of Veterans Affairs Acquisition Regulation (VAAR) Section 809.504(d) and Clause 852.209–70.

OMB Control Number: 2900–0418.

Type of Review: Revision of a currently approved.

Abstract: VAAR section 809.504(d) and Clause 852.209–70 requires VA to determine whether or not to award a contract to a firm that might involve or result in a conflict of interest. VA uses the information to determine whether additional contract terms and conditions are necessary to mitigate the conflict. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on January 17, 2014, at pages 3269 and 3270.

Affected Public: Business or other for-profit and not-for-profit institutions.

Estimated Annual Burden:

a. VAAR section 809.504(d) and VAAR clause 852.209–7—102 hours.

Estimated Average Burden per Respondent:

a. VAAR section 809.504(d) and VAAR clause 852.209–7—1 hour.

Frequency of Response: On occasion.

Estimated Number of Respondents:

a. VAAR section 809.504(d) and VAAR clause 852.209–7—102.

Dated: May 5, 2014.

By direction of the Secretary.

Crystal Rennie,

Department Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2014–10580 Filed 5–7–14; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 79 Thursday,

No. 89 May 8, 2014

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To Delist the Southern Selkirk Mountains Population of Woodland Caribou and Proposed Rule To Amend the Listing; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R1–ES–2012–0097; FXES11130900000C2–123–FF09E32000]

RIN 1018–AZ74

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To Delist the Southern Selkirk Mountains Population of Woodland Caribou and Proposed Rule To Amend the Listing

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to delist the southern Selkirk Mountains population of woodland caribou (*Rangifer tarandus caribou*). This species is currently listed as endangered under the Endangered Species Act of 1973, as amended (Act). After review of the best available scientific and commercial information, we find that delisting the species is not warranted, but rather, a revision to the current listed entity to define a distinct population segment (DPS), consistent with our 1996 distinct population segment policy, is appropriate. As such, we propose to amend the current listing of the southern Selkirk Mountains population of woodland caribou by defining the Southern Mountain Caribou DPS, which includes the currently listed southern Selkirk Mountains population of woodland caribou, and we propose to designate the status of the Southern Mountain Caribou DPS as threatened under the Act. If we finalize this rule as proposed, the Southern Mountain Caribou DPS will be listed as threatened under the Act. This DPS includes the currently listed southern Selkirk Mountains population of woodland caribou, a transboundary population that moves between British Columbia, Canada, and northern Idaho and northeastern Washington, United States. We have determined that the approximately 30,010 acres (12,145 hectares) designated as critical habitat on November 28, 2012 (77 FR 71042), for the southern Selkirk Mountains population of woodland caribou is applicable to the U.S. portion of the proposed Southern Mountain Caribou DPS and, as such, reaffirm the existing critical habitat for the DPS should the proposed amendment to the listed entity become final.

DATES: We will accept all comments received or postmarked on or before July 7, 2014. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by June 23, 2014

ADDRESSES: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search field, enter Docket No. FWS–R1–ES–2012–0097, which is the docket number for this rulemaking. Then, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on the blue ''Comment Now!'' box. If your comments will fit in the provided comment box, please use this feature of *http://www.regulations.gov,* as it is most compatible with our comment review procedures. If you attach your comments as a separate document, our preferred file format is Microsoft Word. If you attach multiple comments (such as form letters), our preferred format is a spreadsheet in Microsoft Excel.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R1–ES–2012–0097; Division of Policy and Directives Management; U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, MS 2042–PDM, Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all information received on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Information Requested section below for more details).

FOR FURTHER INFORMATION CONTACT: Michael Carrier, State Supervisor, U.S. Fish and Wildlife Service, Idaho Fish and Wildlife Office, 1387 S. Vinnell Way, Room 368, Boise, ID 83709; telephone 208–378–5243; facsimile 208–378–5262. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule.

- For any petition to revise the Federal Lists of Endangered and Threatened Wildlife and Plants, we are required under the Act to promptly publish a finding in the **Federal Register** within 1 year. Listing, removing, or changing the status of a species as an endangered or threatened species can only be completed by issuing a rule.
- Any proposed or final rule affecting the status of a possible DPS as endangered or threatened under the Act should clearly analyze the action using the following three elements: Discreteness of the population segment in relation to the remainder of the taxon to which it belongs; the significance of the population segment to the taxon to which it belongs; and the conservation status of the population segment in relation to the Act's standards for listing.
- Under the Act, any species that is determined to be an endangered or threatened species requires critical habitat to be designated, to the maximum extent prudent and determinable. Designations and revisions of critical habitat can only be completed through rulemaking. Here we propose to reaffirm the designation of approximately 30,010 acres (ac) (12,145 hectares (ha)) in one unit within Boundary County, Idaho, and Pend Oreille County, Washington, as critical habitat for the Southern Mountain Caribou DPS should the proposed amendment to the listed entity become final.

This rule proposes to amend the current listing of the southern Selkirk Mountains population of woodland caribou as follows:

- By defining the Southern Mountain Caribou distinct population segment (DPS), which includes the currently listed southern Selkirk Mountains population of woodland caribou;
- By designating the status of the Southern Mountain Caribou DPS as threatened under the Act; and
- By reaffirming the designation of approximately 30,010 ac (12,145 ha) as critical habitat for the Southern Mountain Caribou DPS.

The basis for our action. The southern Selkirk Mountains woodland caribou was listed under the Act on February 29, 1984 (49 FR 7390). According to our ''Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act'' (DPS policy; 61 FR 4722, February 7, 1996), the appropriate application of the policy to pre-1996 DPS listings shall be considered in our 5-year reviews. We conducted a DPS analysis during our 2008 5-year review, which concluded

that the southern Selkirk Mountains population of woodland caribou met both the discreteness and significance elements of the DPS policy. However, we now recognize that this analysis did not consider the significance of this population relative to the appropriate taxon. The purpose of the DPS policy is to set forth standards for determining which populations of vertebrate organisms that are subsets of species or subspecies may qualify as entities that we may list as endangered or threatened under the Act. In the 2008 5-year review, we assessed the significance of the southern Selkirk Mountains population to the ''mountain ecotype'' of woodland caribou. The ''mountain ecotype'' is not a species or subspecies. The appropriate DPS analysis for the southern Selkirk Mountains population of woodland caribou should have been conducted relative to the subspecies woodland caribou (*Rangifer tarandus caribou*). Listing or reclassifying DPSs allows the Service to protect and conserve species and the ecosystems upon which they depend before large-scale decline occurs that would necessitate listing a species or subspecies throughout its entire range.

We will seek peer review. We are seeking comments from knowledgeable individuals with scientific expertise to review our analysis of the best available scientific and commercial information, review our application of that science, and provide any additional scientific information to improve this proposed rule. We will consider all comments and information received during the comment period, and as a result, our final determination may differ from this proposal.

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available, and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned governmental agencies, Native American tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) The DPS' biology, range, and population trends, including:

(a) Habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range, including distribution patterns;

(d) Historical, current, and projected population levels and trends of the local populations of the Southern Mountain Caribou DPS; and

(e) Past and ongoing conservation measures for the DPS, its habitat, or both.

(2) The factors that are the basis for making a listing or delisting determination for a species under section 4(a) of the Act (16 U.S.C. 1531 *et seq.*), which are:

(a) The present or threatened destruction, modification, or curtailment of its habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence.

(3) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this DPS and regulations that may be addressing those threats.

(4) Additional information concerning the historical and current status, range, distribution, and population size of this DPS, including the locations of any additional local populations of this DPS.

(5) Current or planned activities in the areas occupied by the DPS and possible impacts of these activities on this DPS.

(6) Information regarding the current status and population trends of the local populations that comprise the Southern Mountain Caribou DPS. This information will be used to determine the status of the DPS as either not warranted for listing, threatened, or endangered.

(7) Information on the projected and reasonably likely impacts of climate change on the Southern Mountain Caribou DPS and its habitat.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section above. We request that you send comments only by the methods described in the **ADDRESSES** section.

If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hard copy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.* Please include sufficient information with your comments to allow us to verify any scientific or commercial information you include.

Comments and materials we receive, as well as some of the supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov.* All comments, materials, and supporting documentation are available by appointment, during normal business hours, at the Service's Idaho Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

Previous Federal Actions

In 1980, the Service received petitions to list the southern Selkirk Mountains population of woodland caribou as endangered under the Act from the Idaho Department of Fish and Game (IDFG) and Dean Carrier, a U.S. Forest Service (USFS) staff biologist and former chairman of the International Mountain Caribou Technical Committee (IMCTC). At that time, the population was believed to consist of 13 to 20 animals (48 FR 1722, January 14, 1983). Following a review of the petition and other readily available data, the southern Selkirk Mountains population of the woodland caribou (*Rangifer tarandus caribou*) in northeastern Washington, northern Idaho, and southeastern British Columbia was listed as endangered under the Act's emergency procedures on January 14, 1983 (48 FR 1722). A second emergency rule was published on October 25, 1983 (48 FR 49245). A final rule listing the southern Selkirk Mountains population of woodland caribou (*Rangifer tarandus caribou*) as endangered was published on February 29, 1984 (49 FR 7390). The designation of critical habitat was determined to be not prudent at that time. This determination was based on the conclusion that increased poaching could result from the publication of maps showing areas used by the species. A Selkirk Mountain Caribou Management Plan/Recovery Plan was approved by the Service in 1985 (USFWS 1985). A revised Recovery Plan for Woodland Caribou in the Selkirk

Mountains was approved by the Service in 1994 (USFWS 1994).

Notices of 90-day findings on two petitions to delist the southern Selkirk Mountains population of woodland caribou (*Rangifer tarandus caribou*) were published in the **Federal Register** on November 29, 1993 (58 FR 62623), and November 1, 2000 (65 FR 65287). Both petitions were submitted by Mr. Peter B. Wilson, representing the Greater Bonners Ferry Chamber of Commerce, Bonners Ferry, Idaho. We found that neither petition presented substantial scientific or commercial information indicating that delisting of the southern Selkirk Mountains population of woodland caribou was warranted.

On April 11, 2006, a notice of initiation of 5-year reviews for 70 species in Idaho, Oregon, Washington, Hawaii, and Guam was published in the **Federal Register** (71 FR 18345). This notice included the southern Selkirk Mountains population of woodland caribou. The Southern Selkirk Mountains Caribou Population 5-Year Review was completed December 5, 2008 (USFWS 2008; see *http://www.fws.gov/idaho/Caribou/Tab5References/USFWS_2008a.pdf*).

On December 6, 2002, the Defenders of Wildlife, Lands Council, Selkirk Conservation Alliance, and Center for Biological Diversity (plaintiffs) petitioned the Service to designate critical habitat for the southern Selkirk Mountains population of woodland caribou. On February 10, 2003, we acknowledged receipt of the plaintiffs' petition, and stated we were unable to address the petition at that time due to budgetary constraints. On January 15, 2009, plaintiffs filed a complaint for declaratory and injunctive relief (*Defenders of Wildlife et al.,* v. *Salazar,* CV–09–15–EFS) in Federal district court. This complaint alleged that the Service's failure to make a decision more than 6 years after the petition was submitted violated the Administrative Procedure Act (5 U.S.C. 551–559, 701–706). Following a stipulated settlement agreement, we published a proposed rule to designate critical habitat on November 30, 2011 (76 FR 74018), and a final rule on November 28, 2012 (77 FR 71042), designating approximately 30,010 acres (12,145 hectares) as critical habitat. The critical habitat is located in Boundary County, Idaho, and Pend Oreille County, Washington. Although the southern Selkirk Mountains woodland caribou local population is a transboundary species with Canada, in accordance with our implementing regulations at 50 CFR 424.12(h), critical habitat was not designated outside of the jurisdiction of the United States.

More recently, we received a petition on May 14, 2012, from the Pacific Legal Foundation, representing Bonner County, Idaho, and the Idaho State Snowmobile Association. The petition requested that the Service ''delist the Selkirk caribou population (*Rangifer tarandus caribou*) from the list of endangered species.'' On December 19, 2012, we published a 90-day finding (77 FR 75091) in response to that petition. Our finding stated that the petition presented substantial information indicating that the current southern Selkirk Mountains population of woodland caribou may not be a listable entity under our 1996 DPS policy (61 FR 4722). We acknowledged that our analysis in the 2008 5-year review did not consider the southern Selkirk Mountains population of woodland caribou relative to the appropriate taxon allowable under our 1996 DPS policy, the subspecies woodland caribou (*Rangifer tarandus caribou*). This proposed rule constitutes our review of the population relative to the appropriate taxon.

Species Information

Taxonomy

All caribou and reindeer worldwide are considered to be the same species (*Rangifer tarandus*). Although they are referred to by different names, they are able to interbreed and produce offspring (Committee on the Status of Endangered Wildlife in Canada (COSEWIC) 2002, p. 9; Hummel and Ray, 2008, p. 31). Caribou are in the Order Artiodactyla (even-toed ungulates) and Family Cervidae (deer) (Integrated Taxonomic Information System (ITIS) 2013, *in litt.;* Mountain Caribou Science Team (MCST) 2005, p. 1; Smithsonian National Museum of Natural History 2013, *in litt.;* COSEWIC 2011, p. 11). In Europe, the common name for *Rangifer tarandus* is reindeer. In North America, the common name for the species is caribou; only the domesticated forms are called reindeer (Cichowski *et al.* 2004, p. 224). For consistency, the term caribou will be used to refer to the species *Rangifer tarandus* in this **Federal Register** document. According to the American Society of Mammalogists' checklist of mammal species of the world (Smithsonian National Museum of Natural History 2013, *in litt.*) and the Integrated Taxonomic Information System (ITIS [1]), 14 subspecies of caribou are currently recognized worldwide, including the subspecies woodland caribou, *Rangifer tarandus caribou,* as defined by Banfield (1961).

The first widely accepted classification below the species level of caribou, *Rangifer tarandus,* in North America was by Banfield in 1961 (Banfield 1961, entire; Shackleton 2010, p. 3; COSEWIC 2011, pp. 11–12). In his revision, Banfield primarily used adult (4 years or older) skull measurements (Banfield 1961, p. 11) to divide *Rangifer tarandus* in North America into four extant and one extinct subspecies: Barren-ground caribou—*Rangifer tarandus groenlandicus,* Grant's caribou—*Rangifer tarandus granti,* Peary caribou—*Rangifer tarandus pearyi,* woodland caribou—*Rangifer tarandus caribou,* and Dawson's caribou—*Rangifer tarandus dawsoni* (extinct). Banfield also examined pelage (coat/hide) color, and took measurement of hooves, tarsal glands, and antlers as taxonomic indicators (Banfield 1961, p. 26). However, Banfield noted that antlers were extremely variable among individuals and populations (Banfield 1961, p. 24).

Since the 1960s, much has been learned about caribou ecology, distribution, and genetics, revealing substantial diversity within Banfield's subspecies classifications (Miller *et al.* 2007, p. 16). There has been some debate over the caribou subspecies classification, particularly for the woodland caribou subspecies (*Rangifer tarandus caribou*) (Cronin *et al.* 2005, p. 495). Banfield appeared to use the woodland caribou as a ''catch-all'' for all North American caribou not included in the other subspecies despite variability in their behavior, ecology, and morphology (Geist 2007, p. 25). Many have proposed alternative classifications to account for variability within and among the various subspecies of caribou. Population units were described with terms such as ''ecotypes'' (Bergerud 1996, entire) based on migration patterns and calving strategies, and adaptations to a certain set of environmental conditions. This has caused confusion because there is no universally accepted list of caribou ecotypes or criteria to distinguish caribou ecotypes (COSEWIC 2011, pp. 12–13).

There is also confusion in terminology. For example, in Québec there are migratory and sedentary caribou ecotypes (Boulet *et al.* 2007, p. 4224). Caribou of the sedentary ecotype are generally characterized by relatively little movement between seasonal ranges. They also generally exhibit a

[1] ITIS is a database created through a partnership amongst agencies in the United States, Canada, and Mexico, along with other organizations and taxonomic specialists (ITIS 2013, *in litt.*).

dispersed calving strategy, with female caribou giving birth in isolation to avoid predators. Caribou of the migratory ecotype generally move large distances between seasonal ranges. These caribou generally aggregate during calving (COSEWIC 2011, p. 13). In British Columbia, woodland caribou ecotypes are distinguished based on differences in the ecological and physical factors within their ranges. These factors include relative depth of the snowpack, forage availability, and terrain (COSEWIC 2011, p. 13). The term ''mountain caribou'' is a common ecotype designation used throughout the scientific literature to describe the mountain dwelling/arboreal-lichen feeding woodland caribou local populations found in the mountainous regions of southeastern British Columbia. The mountain caribou is distinguished from other woodland caribou by behavioral and ecological characteristics (MCST 2005, p. 1). The mountain caribou is closely associated with high-elevation, late-successional, or old-growth coniferous forests where their primary winter food, arboreal lichens, occurs. Regardless of efforts to further refine caribou subspecies designations, Banfield's caribou subspecies classifications, including the woodland caribou subspecies (*Rangifer tarandus caribou*), are still recognized and used today. No alternative subspecies classifications for caribou have been systematically described or broadly accepted (COSEWIC 2011, p. 12).

Species Description

Rangewide, individual caribou (*Rangifer tarandus*) exhibit large variations in their physical and behavioral characteristics (COSEWIC 2011, p. 10). Caribou can be highly variable in color. Their winter pelage varies from nearly white in Arctic caribou such as the Peary caribou, to dark brown in woodland caribou (COSEWIC 2011, pp. 10–11). Both male and female caribou grow antlers, although antlers may be absent in some females. All caribou are adapted to existence in cold winter climates. They have a range of adaptations including thick fur, strong sense of smell (for locating food under snow; Henttonen and Tikhonov 2008, p. 3), large fat stores, a respiratory system that minimizes heat loss during respiration, and an ability to lower metabolism in the winter by decreasing energy expenditure (COSEWIC 2011, p. 11). Caribou are also variable in their diet. They feed on lichens, mosses, grasses, ferns, and shoots and leaves of deciduous shrubs and trees, depending on availability (Henttonen and Tikhonov 2008, p. 3). One of the most distinctive characteristics of all subspecies of caribou is their large, rounded hooves. Their hooves reduce sinking into snow and wetlands, and allow them to walk or stand on hard snowpack to reach tree lichens, and they can use their hooves as paddles while swimming (COSEWIC 2002, p. 18). All caribou have prominent dew claws just above the hoof.

As previously discussed, Banfield (1961) described five caribou subspecies in North America based on their physical characteristics. Banfield primarily used skull measurements, as well as pelage, antler shape, and hoof shape, to divide *Rangifer tarandus* into four extant and one extinct North American subspecies. Woodland caribou (*Rangifer tarandus caribou*), one of the five subspecies he identified, is the southern-most subspecies in North America. Its range occurs in an east to west band from eastern Newfoundland and northern Quebec all the way into western British Columbia, and as far south as northern Idaho and Washington in the United States. This subspecies classification is still recognized and used by scientific authorities including the American Society of Mammalogists and COSEWIC.

Individual caribou can display tremendous variability in appearance and body form even within the same population (Hummel and Ray 2008, p. 34). Woodland caribou are generally described as dark brown with a white mane and some white on their sides (COSEWIC 2002, p. 18) and have a noticeable band of white hairs (called socks) along the upper edge of each hoof (Shackleton 2010, p. 1). They are larger and darker than both the Peary caribou (*Rangifer tarandus pearyi*) and the barren-ground caribou (*Rangifer tarandus groenlandicus*), which occur in the Northwest Territories and east in Nunavut (Canada 2013, *in litt.*). All caribou can withstand severe cold because their thick winter coat contains semi-hollow hair with strong insulative properties. However, woodland caribou are susceptible to overheating in summer months as their dark coat absorbs sunlight (COSEWIC 2002, p. 36). Similar to the Peary and barren-ground caribou subspecies, the nose of the woodland caribou is blunt and rather square shaped. In addition, their ears are short, broad, and not pointed. Both sexes have antlers although up to half of females may lack antlers or have one antler. The antlers of woodland caribou are considered to be denser and flatter than those of barren-ground caribou (Canada 2013, *in litt.*). Adult males of woodland caribou are described as having a mane of longer hairs along the bottom of the neck to the chest. During rut, the light color of the neck and mane contrasts with the darker colored body (Shackleton 2010, p. 1). Height of the woodland caribou at the shoulder is a little over 3 to 4 feet (ft) (1.0 to 1.2 meters (m)). Females weigh about 240 to 330 pounds (lbs) (110 to 150 kilograms (kg)) and males about 350 to 460 lbs (160 to 210 kg).

Biology

Reproduction. Woodland caribou are polygynous, with dominant bulls breeding with multiple cows in the fall (Cichowski *et al.* 2004, p. 229). Pregnant females travel to isolated, often rugged areas where predators and other prey animals are limited. Calves are born in late spring into early summer (Cichowski *et al.* 2004, pp. 229–230; COSEWIC 2002, p. 34). A single young is born and is capable of following its mother soon after birth (Shackleton 2010, p. 2). The productivity of caribou is low compared to other cervids (e.g., deer and moose). Caribou have only one calf per year and most females reproduce for the first time around 3 years of age (Cichowski *et al.* 2004, p. 230; Shackleton 2010, p. 1). Caribou reach sexual maturity at approximately 16 to 28 months of age.

On average, mortality of woodland caribou calves is 50 to 70 percent within their first year. This mortality depends on the abundance of predators or the availability of winter forage during pregnancy, or both (COSEWIC 2002, p. 35). Predation is the most common cause of calf mortality (Shackleton 2010, p. 2). Calf mortality is also linked to the health of the calf at birth (COSEWIC 2002, p. 35). It has been shown that, due to temporal variation in the accessibility of lichens, female caribou may be nutritionally deficient in some years during pregnancy and may be more likely to produce weak calves. Weak calves are likely more susceptible to predation and diseases such as pneumonia. As such, temporal variation in lichen availability may also be driving calf mortality and low calf recruitment in some years (COSEWIC 2002, p. 35).

Habitat Use. Caribou (*Rangifer tarandus*) are the most widespread ungulate species in the world. The ecosystems they have evolved to occupy are highly variable (COSEWIC 2011, p. 11), including the tundra and taiga biomes on all northern continents—North America, Europe, and Asia (Henttonen and Tikhonov 2008, p. 2). Occupied habitats vary from flat and

open arctic and subarctic tundra to forested habitat, including high-elevation and steep mountainous slopes (Henttonen and Tikhonov 2008, p. 3). Variability in habitat occupancy has driven the evolution of many different ecosystem-specific behavioral and migratory traits within the species. For example, caribou in many ecosystems migrate long distances between their calving and wintering grounds. Meanwhile, caribou in other ecosystems are relatively sedentary, making short movements between these areas. Further, caribou in many ecosystems calve in large groups, while others disperse and calve in solitude at high elevations away from potential predators (Bergerud 1996, entire).

Distribution and Abundance

Historically, caribou (*Rangifer tarandus*) populations occurred in nearly all northern latitudes. They have since been extirpated from many areas in Europe and eastern North America (MCST 2005, p. 1). In Banfield's revision (1961), he reported the southern boundary of caribou in the early part of the 19th century to include central Maine and extreme northern New Hampshire and Vermont (Banfield 1961, p. 73). He also noted their occurrence around the Great Lakes in Minnesota, Wisconsin, and Michigan (Banfield 1961, pp. 74–75), and in the northwestern United States in Washington, Idaho, and Montana (Banfield 1961, p. 76). Caribou were reported to be extirpated from Maine after about 1908, from New Hampshire after about 1881, and from Vermont after about 1840 (Banfield 1961, p. 76). The last caribou in Michigan was observed off Isle Royale in 1905, and the last caribou in Wisconsin was observed in about 1840 (Banfield 1961, p. 77). An extensive investigation by Evans (1960, pp. 94–96) estimated that no more than 100 caribou still lived in the northwestern United States, primarily in northern Idaho. Today, the entire southern Selkirk Mountains population of woodland caribou, the only local caribou population [2] known to have a home range that extends into the contiguous United States, is estimated to consist of only 27 individuals (Ritchie 2013, *in litt.*).

Currently, caribou are restricted to the more northern areas of North America, Russia, and Scandinavia (MCST 2005, p. 1). In North America, caribou occur primarily north of the 50th latitude. The majority of caribou occur in boreal, montane, and arctic environments in Alaska, most Canadian Provinces, and all Canadian Territories except for New Brunswick, Nova Scotia, and Prince Edward Island (COSEWIC 2011, p. 10). The subspecies woodland caribou (*Rangifer tarandus caribou*) occurs in Canada in the southern Yukon; southwestern Northwest Territories; northern, west-central, and southeastern British Columbia; west-central and northern Alberta; boreal portions of Saskatchewan and Manitoba; the boreal and arctic portions of Ontario, Quebec, and Newfoundland; and Labrador; and in the United States in extreme northeastern Washington and northern Idaho (Cichowski *et al.* 2004, pp. 225–226; COSEWIC 2002, p. viii).

The southern Selkirk Mountains population of woodland caribou (*Rangifer tarandus caribou*) is the southernmost extant, local population of woodland caribou in North America (Idaho Comprehensive Wildlife Conservation Strategy (IDFG CWCS) IDFG 2005, p. 373; USFWS 2008, p. 12). This population occurs in British Columbia, Canada, and northern Idaho and northeastern Washington, United States. Cichowski *et al.* (2004, p. 226) reported the total population of the woodland caribou subspecies to be over 1 million. The present distribution of woodland caribou in Canada is greatly reduced from historical accounts. Reports indicate that the extent of occurrence in British Columbia populations has decreased by up to 40 percent in the last few centuries (COSEWIC 2002, p. viii).

Evaluation of the Southern Mountain Caribou as a Distinct Population Segment

Introduction and Background

Distinctive, discrete, and significant populations of the woodland caribou have been identified, described, and assessed by the COSEWIC. COSEWIC is composed of qualified wildlife experts drawn from the Federal, provincial, and territorial governments; wildlife management boards; Aboriginal groups; universities; museums; national nongovernmental organizations; and others with expertise in the conservation of wildlife species in Canada. The role of COSEWIC is to assess and classify, using the best available information, the conservation status of wildlife species, subspecies, and separate populations suspected of being at risk. In addition, they make species status recommendations to the Canadian government and the public. Once COSEWIC makes this recommendation, it is the option of the Canadian Federal government to decide whether a species will be listed under Canada's Species At Risk Act (SARA). For example, the Southern Mountain Caribou, a population of the woodland caribou, is currently designated as ''Threatened'' under SARA (COSEWIC 2011, Table 1, p. 74). This designation was reached because the population of Southern Mountain Caribou is mostly made up of small, increasingly isolated herds (most of which are in decline) with an estimated range reduction of up to 40 percent from their historical range (COSEWIC 2002, p. 58; COSEWIC 2011, Table 1, p. 74). The Southern Mountain Caribou includes the transboundary southern Selkirk Mountains population of woodland caribou, which is currently listed as endangered under the U.S. Endangered Species Act (Act) and is the subject of this 12-month finding.

Because we now know that the southern Selkirk Mountains population of woodland caribou is a part of the larger Southern Mountain Caribou population, as recognized by COSEWIC, we recognize that our evaluation of the southern Selkirk Mountains population is more appropriately conducted at the scale of the Southern Mountain Caribou population. Therefore, below we evaluate whether, under our DPS policy, the Southern Mountain Caribou population segment of woodland caribou occurring in British Columbia, Canada, and northeastern Washington and northern Idaho, United States, qualifies as a DPS under the Act.

We completed a 5-year review of the endangered southern Selkirk Mountains population of woodland caribou (*Rangifer tarandus caribou*) in 2008 (see *http://www.fws.gov/idaho/Caribou/Tab5References/USFWS_2008a.pdf*). Because this population was listed prior to the Service's 1996 DPS policy (61 FR 4722), the 5-year review included analysis of this population in relation to the DPS policy. In conducting this DPS analysis, we considered the discreteness and significance of this population in relation to the mountain caribou metapopulation (USFWS 2008, pp. 6–13). From this analysis we concluded that the southern Selkirk Mountains population of woodland caribou met both the discreteness and significance elements of the DPS policy and was a

[2] Woodland caribou populations can be further broken down into sub-units we are calling ''local populations'' (also referred to elsewhere as ''herds'' or ''subpopulations''). These local caribou populations represent groupings of individual woodland caribou that have overlapping ranges/movement patterns and commonly breed with one another more frequently than they breed outside of their local population boundary. It is thought that local populations in southern British Columbia are a relatively recent artifact within the population of woodland caribou and that, historically, movement of caribou between local populations was more common. In some cases, local population boundaries have been delineated through telemetry studies.

distinct population segment of the mountain caribou metapopulation (USFWS 2008, p. 13). We acknowledged in our December 19, 2012, 90-day finding (77 FR 75091) that the DPS analysis in our 2008 5-year review was not conducted relative to the appropriate taxon. Specifically, the appropriate DPS analysis should have been conducted relative to the subspecies woodland caribou (*Rangifer tarandus caribou*).

Section 3(16) of the Act defines the term ''species'' to include ''any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.'' We have always understood the phrase ''interbreeds when mature'' to mean that a DPS must consist of members of the same species or subspecies in the wild that would be biologically capable of interbreeding if given the opportunity, but all members need not actually interbreed with each other. A DPS is a subset of a species or subspecies, and cannot consist of members of a different species or subspecies. The ''biological species concept'' defines species according to a group of organisms, their actual or potential ability to interbreed, and their relative reproductive isolation from other organisms. This concept is a widely accepted approach to defining species. We believe that the Act's use of the phrase ''interbreeds when mature'' reflects this understanding. Use of this phrase with respect to a DPS is simply intended to mean that a DPS must be comprised of members of the same species or subspecies. As long as this requirement is met, a DPS may include multiple populations of vertebrate organisms that may not interbreed with each other. For example, a DPS may consist of multiple populations of a fish species separated into different drainages. While these populations may not actually interbreed with each other, their members are biologically capable of interbreeding.

The National Marine Fisheries Service (NMFS) and the Service published a joint ''Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act'' (DPS Policy) on February 7, 1996 (61 FR 4722). According to the DPS policy, two elements must be satisfied in order for a population segment to qualify as a possible DPS: Discreteness and significance. If the population segment qualifies as a DPS, the conservation status of that DPS is then evaluated to determine whether it is endangered or threatened.

A population segment of a vertebrate species may be considered discrete if it satisfies either one of the following conditions: (1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors; or (2) it is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act.

If a population is found to be discrete, then it is evaluated for significance under the DPS policy on the basis of its importance to the taxon to which it belongs. This consideration may include, but is not limited to, the following: (1) Persistence of the discrete population segment in an ecological setting unusual or unique to the taxon; (2) evidence that loss of the discrete population segment would result in a significant gap in the range of the taxon; (3) evidence that the population represents the only surviving natural occurrence of the taxon that may be more abundant elsewhere as an introduced population outside of its historical range; or (4) evidence that the population differs markedly from other populations of the species in its genetic characteristics.

If a population segment is both discrete and significant (i.e., it qualifies as a potential DPS) its evaluation for endangered or threatened status is based on the Act's definitions of those terms and a review of the factors listed in section 4(a) of the Act. According to our DPS policy, it may be appropriate to assign different classifications to different DPSs of the same vertebrate taxon. For this 12-month finding and DPS analysis of the southern Selkirk Mountains population of woodland caribou to the subspecies woodland caribou, we reviewed and evaluated information contained in numerous publications and reports, including but not limited to: Banfield 1961, Stevenson *et al.* 2001, COSEWIC 2002, Cichowski *et al.* 2004, Wittmer *et al.* 2005b, Geist 2007, COSEWIC 2011, van Oort *et al.* 2011, and Serrouya *et al.* 2012.

In 2002 and 2011, COSEWIC completed status assessments of caribou subspecies and species populations in North America. The 2002 COSEWIC Report evaluated woodland caribou ''nationally significant populations'' (NSPs). The more recent COSEWIC (2011) Report described ''Designatable Units'' (DUs) as the appropriate ''discrete and significant units'' useful to conserve and manage caribou populations throughout Canada. Information used in COSEWIC's 2011 report is useful to our DPS analysis. Canada's DUs are identified based on the criteria that there are ''discrete and evolutionarily significant units of a taxonomic species, where 'significant' means that the unit is important to the evolutionary legacy of the species as a whole and, if lost, would likely not be replaced through natural dispersion'' (COSEWIC 2011, p. 14). They consider a population or group of populations to be ''discrete'' based on the following criteria: Evidence of genetic distinctiveness, natural disjunction between substantial portions of the species' geographic range, and/or occupancy of differing eco-geographic regions that are relevant to the species and reflect historical or genetic distinction (COSEWIC 2011, *in litt.*).

It should be noted that COSEWIC's DU designation does not necessarily consider the conservation status or threats to the persistence of caribou DUs. Consistent with their 2009 guidelines, the COSEWIC used five lines of evidence to determine caribou DUs; these include: (1) Phylogenetics; (2) genetic diversity and structure; (3) morphology; (4) movements, behavior, and life-history strategies; and (5) distribution (COSEWIC 2011, p. 15). As a general rule, a DU was designated when several lines of evidence provided support for discreteness and significance (COSEWIC 2011, pp. 15–16). Twelve caribou DUs were classified by COSEWIC in 2011, including the Southern Mountain Caribou (DU9), which includes the southern Selkirk Mountains population of woodland caribou (COSEWIC 2011, p. 21). The information used to describe the Southern Mountain DU is reviewed and evaluated in our DPS analysis, as it includes numerous local woodland caribou populations that all possess similar and unique foraging, migration, and habitat use behaviors and are geographically separated from other caribou DUs.

Discreteness

As outlined in our 1996 DPS policy, a population segment of a vertebrate species may be considered discrete if it satisfies either one of the following conditions: (1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors; or (2) it is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act.

Physical (Geographic) Discreteness

The southern Selkirk Mountains population of woodland caribou is one of 15 (COSEWIC 2011, p. 89) local woodland caribou populations that share distinct foraging, migration, and habitat use behaviors. These populations are all located in steep, mountainous terrain in central and southeastern British Columbia, and extreme northeastern Washington and northern Idaho, United States. Little to no dispersal has been detected between these local populations and other local caribou populations outside this geographic area (Wittmer *et al.* 2005b, pp. 408, 409; COSEWIC 2011, p. 49; van Oort *et al.* 2011, pp. 222–223). For the purposes of this DPS analysis, this collection of local woodland caribou populations, which, as noted above, includes the southern Selkirk Mountains population, will hereafter be referred to as the Southern Mountain Caribou.

Telemetry research by Wittmer *et al.* (2005b) and van Oort *et al.* (2011) supports the physical (geographic) discreteness of Southern Mountain Caribou. One exception is that there is some limited annual range overlap between a few local caribou populations at the far north of the Southern Mountain Caribou population. Although all caribou and reindeer worldwide are considered to be the same species (*Rangifer tarandus*) and are presumed able to interbreed and produce offspring (COSEWIC 2002, p. 9), the distribution of the Southern Mountain Caribou does not overlap with other populations during the rut or mating season (COSEWIC 2011, p. 50). Previous telemetry studies were completed by Apps and McLellan (2006, pp. 84–85, 92) to determine occupancy across differing landscapes. These studies confirmed that woodland caribou within the geographic area that defines the Southern Mountain Caribou population are strongly associated with the steep, mountainous terrain characterizing the ''interior wet-belt'' of British Columbia (Stevenson *et al.* 2001, p. 3), located west of the continental divide. This area is influenced by Pacific air masses that produce the wettest climate in the interior of British Columbia (Stevenson *et al.* 2001, p. 3). Forests consist of Engelmann spruce (*Picea engelmannii* or *P. glauca* x *engelmannii*)/subalpine fir (*Abies lasiocarpa*) at high elevation, and western red cedar (*Thuja plicata*)/western hemlock (*Tsuga heterophylla*) at lower elevations. Snowpack typically averages 5 to 16 ft (2 to 5 m) in depth (Stevenson *et al.* 2001, p. 4; COSEWIC 2011, p. 50). Apps and McLellan (2006, p. 92) noted that the steep, complex topography within the interior wet-belt provides seasonally important habitats. Caribou access this habitat by migrating in elevational shifts rather than through the long horizontal migrations of other subspecies in northern Canada. Woodland caribou that live within this interior wet-belt of southern British Columbia, northeastern Washington, and northern Idaho are strongly associated with old-growth forested landscapes (Apps *et al.* 2001, pp. 65, 70). These landscapes are predominantly cedar/hemlock and spruce/subalpine fir composition (Stevenson *et al.* 2001, pp. 3–5; Apps and McLellan 2006, pp. 84, 91; Cichowski *et al.* 2004, pp. 224, 231; COSEWIC 2011, p. 50) that supports woodland caribou's late-winter diet consisting almost entirely of arboreal hair lichens (Cichowski *et al.* 2004, p. 229).

The Southern Mountain Caribou population is markedly separate from other populations of woodland caribou as a result of physical (geographic) factors. The distribution of this population is primarily located within the interior wet-belt of southern British Columbia, occurring west of the continental divide and generally south of Reynolds Creek (which is about 90 miles (mi) (150 kilometers (km)) north of Prince George, British Columbia). Its geographic range is such that it does not reproduce with other local populations of woodland caribou.

Behavioral Discreteness

In addition to being physically (geographically) discrete, individuals within the Southern Mountain Caribou population are behaviorally distinguished from woodland caribou in other populations (including the neighboring Northern Mountain and Central Mountain populations). Southern Mountain Caribou uniquely use steep, high-elevation, mountainous habitats with deep snowfall (about 5 to 16 ft; 2 to 5 m) (COSEWIC 2011, p. 50), and, as described below, are the only woodland caribou that depend on arboreal lichens for forage. This habitat use contrasts with the behavior of other woodland caribou, which occupy relatively drier habitats that receive less snowfall. With less snowfall in these areas, these woodland caribou primarily forage on terrestrial lichens, accessing them by ''cratering'' or digging through the snow with their hooves (Thomas *et al.* 1996, p. 339; COSEWIC 2002, pp. 25, 27).

Extreme deep snow conditions have led to a foraging strategy by the Southern Mountain Caribou that is unique among woodland caribou. They rely exclusively on arboreal (tree) lichens for 3 or more months of the year (Servheen and Lyon 1989, p. 235; Edmonds 1991, p. 91; Stevenson *et al.* 2001, p. 1; Cichowski *et al.* 2004, pp. 224, 230–231; MCST 2005, p. 2; COSEWIC 2011, p. 50). Arboreal lichens are a critical winter food for the Southern Mountain Caribou from November to May (Servheen and Lyon 1989, p. 235; Stevenson *et al.* 2001, p. 1; Cichowski *et al.* 2004, p. 233). During this time, a Southern Mountain Caribou's diet can be composed almost entirely of these lichens. Arboreal lichens are pulled from the branches of conifers, picked from the surface of the snow after being blown out of trees by wind, or are grazed from wind-thrown branches and trees. The two kinds of arboreal lichens commonly eaten by the Southern Mountain Caribou are *Bryoria* spp. and *Alectoria sarmentosa.* Both are extremely slow-growing lichens most commonly found in high-elevation, old-growth conifer forests that are greater than 250 years old (Paquet 1997, p. 14; Apps *et al.* 2001, pp. 65–66).

Another unique behavior of caribou within the Southern Mountain Caribou population is their altitudinal migrations. They may undertake as many as four of these migrations per year (COSEWIC 2011, p. 50). After wintering at high elevations as described above, at the onset of spring these caribou move to lower elevations where snow has melted to forage on new green vegetation (Paquet 1997, p. 16; Mountain Caribou Technical Advisory Committee (MCTAC) 2002, p. 11). Pregnant females will move to these spring habitats for forage. During the calving season, sometime from June into July, the need to avoid predators influences habitat selection. Areas selected for calving are typically high-elevation, alpine and non-forested areas in close proximity to old-growth forest ridge tops, as well as high-elevation basins. These high-elevation sites can be food limited, but are more likely to be free of predators (USFWS 1994, p. 8; MCTAC 2002, p. 11; Cichowski *et al.* 2004, p. 232, Kinley and Apps 2007, p. 16). During calving, arboreal lichens become the primary food source for pregnant females at these elevations. This is because green forage is largely unavailable in these secluded, old-growth conifer habitats.

During summer months, Southern Mountain Caribou move back to upper elevation spruce/alpine fir forests (Paquet 1997, p. 16). Summer diets include selective foraging of grasses, flowering plants, horsetails, willow and

dwarf birch leaves and tips, sedges, lichens (Paquet 1997, pp. 13, 16), and huckleberry leaves (U.S. Forest Service (USFS) 2004, p. 18). The fall and early winter diet consists largely of dried grasses, sedges, willow and dwarf birch tips, and arboreal lichens.

The Southern Mountain Caribou are behaviorally adapted to the steep, high-elevation, mountainous habitat with deep snowpack. They feed almost exclusively on arboreal lichens for 3 or more months out of the year. They are also reproductively isolated, due to their behavior and separation from other caribou populations during the fall rut and mating season (COSEWIC 2011, p. 50). Based on these unique adaptations, we consider the Southern Mountain Caribou population to have met the behavioral ''discreteness'' standard in our DPS policy.

Genetic Discreteness

Data from Serrouya *et al.* (2012, p. 2594) show that genetic population structure (i.e., patterning or clustering of the genetic make-up of individuals within a population) does exist within woodland caribou. Specifically, Serrouya revealed a genetic cluster that is unique to Southern Mountain Caribou and different from genetic clusters found in surrounding local populations of woodland caribou designated as part of other Canada caribou DUs (i.e., Central Mountain DU, Northern Mountain DU, and Boreal DU). However, Serrouya also revealed genetic clusters that occur in both the Southern Mountain Caribou and neighboring DUs that suggest some historical gene flow did occur in the past, meaning that caribou did historically move between populations of these DUs and interbreed when mature.

This cluster overlap of DU boundaries is not surprising, as genetic structure is reflective of long-term historical population dynamics and does not necessarily depict current gene flow. Indeed, it does appear that recent impediments to gene flow may be genetically isolating woodland caribou in the southwest portion of their range (Wittmer *et al.* 2005b, p. 414; van Oort *et al.* 2011, p. 221; Serrouya *et al.* 2012, p. 2598). These impediments include anthropogenic habitat fragmentation and widespread caribou population declines. Therefore, genetic specialization related to unique behaviors and habitat use may represent a relatively recent life-history characteristic (Weckworth *et al.* 2012, p. 3620). Historical gene flow between local populations of Southern Mountain Caribou and neighboring local populations did occur in the past. However, study results from Serrouya *et al.* (2012), combined with telemetry data from Wittmer *et al.* (2005b, p. 414) and van Oort *et al.* (2011, p. 221), suggest that isolation of local populations is now the norm, affecting genetics of these local populations differently through genetic drift (Serrouya *et al.* 2012, p. 2597).

A certain level of genetic differentiation does exist between the Southern Mountain Caribou population and neighboring woodland caribou. However, we do not presently consider there to be sufficient evidence to determine that the Southern Mountain Caribou are genetically isolated from other populations of caribou, particularly the Central Mountain population. Therefore, at this time, we do not find that this population meets the genetic ''discreteness'' standard in our DPS policy.

Discreteness Conclusion

In summary, we determine the best available information indicates that the Southern Mountain Caribou, comprised of 15 local woodland caribou populations that occur in southern British Columbia, northeastern Washington, and northern Idaho, is markedly separated from all other populations of woodland caribou. The Southern Mountain Caribou population is physically (geographically), behaviorally, and reproductively isolated from other woodland caribou. Therefore, we consider the Southern Mountain Caribou population to be discrete per our DPS policy.

Significance

Under our DPS policy, once we have determined that a population segment is discrete, we consider its biological and ecological significance to the larger taxon to which it belongs. Significance is not determined by a quantitative analysis, but is instead a qualitative finding. It will vary from species to species and cannot be reduced to a simple formula or flat percentage. Our DPS policy provides several potential considerations that may demonstrate the significance of a population segment to the species to which it belongs. These considerations include, but are not limited to: (1) Persistence of the discrete population segment in an ecological setting unusual or unique for the taxon; (2) evidence that the discrete population segment differs markedly from other population segments in its genetic characteristics; (3) evidence that the population segment represents the only surviving natural occurrence of the taxon that may be more abundant elsewhere as an introduced population outside its historical range; and (4) evidence that loss of the discrete population segment would result in a significant gap in the range of the taxon. The following discussion addresses considerations regarding the significance of the Southern Mountain Caribou population to the subspecies woodland caribou (*Rangifer tarandus caribou*).

(1) Persistence of the Discrete Population Segment in an Ecological Setting Unusual or Unique for the Taxon

As previously discussed, woodland caribou within the Southern Mountain Caribou population are distinguished from woodland caribou in other areas. Southern Mountain Caribou live in, and are behaviorally adapted to, a unique ecological setting characterized by high-elevation, high-precipitation, and steep old-growth conifer forests that support abundant arboreal lichens (COSEWIC 2011, p. 50). In addition, all woodland caribou in the Southern Mountain Caribou population exhibit a distinct behavior. Specifically, they spend the winter months in high-elevation, steep, mountainous habitats where individuals stand on the deep, hard-crusted snowpack and feed exclusively on arboreal lichens on standing or fallen old-growth conifer trees (Cichowski *et al.* 2004, pp. 224, 230–231; MCST 2005, p. 2; COSEWIC 2011, p. 50). This behavior is unlike that of woodland caribou in neighboring areas that occupy less steep, drier terrain and do not feed on arboreal lichens during the winter (Thomas *et al.* 1996, p. 339; COSEWIC 2011, p. 50).

In addition to persisting in a specific environment characterized by steep, high-elevation, old-growth forests and being reliant on arboreal lichens as primary winter forage, caribou of the Southern Mountain population make relatively short-distance altitudinal migrations up to four times per year. These caribou occupy valley bottoms and lower slopes in the early winter, and ridge tops and upper slopes in later winter after the snowpack deepens and hardens. In the spring, they move to lower elevations again to access green vegetation. Females make solitary movements back to high elevations to calve. This habitat and behavior are unique to the Southern Mountain Caribou population. All other populations within the woodland caribou subspecies occupy winter habitat characterized by gentler topography, lower elevation, and less winter snowpack (COSEWIC 2011, pp. 43, 46) where their primary winter forage, terrestrial (ground) lichens, is

most accessible (Thomas *et al.* 1996, p. 339; COSEWIC 2011, pp. 43, 46). Unlike woodland caribou of the Southern Mountain population, some populations in eastern Canada (Eastern Migratory DU (DU4; COSEWIC 2011, p. 34)) will migrate relatively long distances across the landscape between wintering and calving habitat, where they will calve in large aggregated groups (COSEWIC 2011, pp., 33, 37; Abraham *et al.* 2012, p. 274).

We conclude that the Southern Mountain Caribou meets the definition of significant in accordance with our DPS policy, as this population currently persists in an ecological setting unusual or unique for the subspecies of woodland caribou.

(2) Evidence That the Discrete Population Segment Differs Markedly From Other Population Segments in Its Genetic Characteristics

Research by Serrouya *et al.* (2012, p. 2594) indicates that there is some genetic population structure between woodland caribou populations in western North America. This research identified two main genetic clusters within the Southern Mountain Caribou, separated from each other by the North Thompson Valley in British Columbia. One of these clusters is unique, with few exceptions, to the Southern Mountain Caribou (structure analysis; Serrouya *et al.* 2012, p. 2594). The other cluster, northwest of the North Thompson Valley, is shared with the adjacent Central Mountain population. As such, there is limited genetic evidence in this study that Southern Mountain Caribou populations north of the North Thompson Valley are genetically unique relative to caribou of the Central Mountain population.

As previously discussed, the best available information indicates that recent impediments to gene flow such as habitat fragmentation and widespread caribou population declines may be genetically isolating woodland caribou in the southwestern portion of their range (Wittmer *et al.* 2005b, p. 414; van Oort *et al.* 2011, p. 221; Serrouya *et al.* 2012, p. 2598). This genetic isolation has resulted in unique behaviors and habitat use (Weckworth *et al.* 2012, p. 3620). Study results from Serrouya *et al.* (2012), combined with telemetry data from Wittmer *et al.* (2005b, p. 414) and van Oort *et al.* (2011, p. 221), suggest that while historical gene flow between local populations of Southern Mountain Caribou and neighboring local populations did occur in the past, isolation of these local populations is now the norm. Research into the genetics of the woodland caribou will likely continue and will provide further insight into gene flow between these populations.

Despite some level of genetic structure between the Southern Mountain Caribou population and neighboring woodland caribou, and a predicted continuation of genetic structuring between local populations within Southern Mountain Caribou, we do not presently consider Southern Mountain Caribou ''genetically unique.'' Therefore, at this time we do not find this population meets the genetic ''significance'' standard in our DPS policy.

(3) Evidence That the Population Segment Represents the Only Surviving Natural Occurrence of a Taxon That May Be More Abundant Esewhere as an Introduced Population Outside Its Historic Range

All caribou in the world are one species (*Rangifer tarandus*). In a global review of taxonomy of the genus *Rangifer,* Banfield (1961) documented the occurrence of five subspecies in North America. Woodland caribou (*Rangifer tarandus caribou*), one of the five recognized subspecies of caribou, are the southern-most subspecies in North America. The range of woodland caribou extends in an east/west band from eastern Newfoundland and northern Quebec, all the way into western British Columbia. Southern Mountain Caribou represent a discrete subset of this subspecies. Because Southern Mountain Caribou are not the only surviving natural occurrence of the woodland caribou subspecies, this element is not applicable.

(4) Evidence That Loss of the Discrete Population Segment Would Result in a Significant Gap in the Range of the Taxon

Historically, woodland caribou were widely distributed throughout portions of the northern tier of the coterminous United States from Washington to Maine, as well as throughout most of southern Canada (COSEWIC 2002, p. 19). However, as a result of habitat loss and fragmentation, overhunting, and the effects of predation, the population of woodland caribou within the British Columbia portion of their range has declined dramatically with an estimated 40 percent range reduction (COSEWIC 2002, p. 20). Further evidence of this decline was observed within the Southern Mountain Caribou population, where there were an estimated 2,554 individuals as recently as 1995 (Hatter *et al.* 2004, p. 7). The most recent estimate of individuals in this population was conducted in 2012, and estimated only 1,657 individuals (Ritchie 2013, *in litt.*). Loss of the Southern Mountain Caribou population would result in the loss of the southern-most extent of the range of woodland caribou by about 2.5 degrees of latitude. This includes the only remaining population of the woodland caribou in the coterminous United States. An additional consequence of the loss of the Southern Mountain Caribou population would be the elimination of the only North American caribou population with the distinct behavior of feeding exclusively on arboreal lichens for 3 or more months of the year. This feeding behavior is related to their spending winter months in high-elevation, steep, mountainous habitats with deep snowpack.

The extirpation of peripheral populations, such as the Southern Mountain Caribou population, is concerning because of the potential conservation value that peripheral populations can provide to a species or subspecies. Specifically, peripheral populations can possess slight genetic or phenotypic divergences from core populations (Lesica and Allendorf 1995, p. 756; Fraser 2000, p. 50). The genotypic and phenotypic characteristics peripheral populations may provide to the core population of the species may be central to the species' survival in the face of environmental change (Lesica and Allendorf 1995, p. 756; Bunnell *et al.* 2004, p. 2242).

The extirpation of Southern Mountain Caribou would represent a significant gap in the range of the woodland caribou subspecies. Extirpation of this population segment would result in the loss of a peripheral population segment of woodland caribou that live in, and are behaviorally adapted to, a unique ecological setting characterized by high-elevation, high-precipitation (including deep snowpack), and steep old-growth conifer forests that support abundant arboreal lichens.

Significance Conclusion

We conclude that the Southern Mountain Caribou persists in an ecological setting unusual or unique for the subspecies of woodland caribou, and that loss of the Southern Mountain Caribou would result in a significant gap in the range of the woodland caribou subspecies. Therefore, the discrete Southern Mountain Caribou population of woodland caribou that occur in southern British Columbia, and in northeastern Washington and northern Idaho meet the significance criteria under our DPS policy.

Listable Entity Determination

In conclusion, the Service finds that the Southern Mountain Caribou population meets both the discreteness and significance elements of our DPS policy. It qualifies as discrete because of its marked physical (geographic) and behavioral separation from other populations of the woodland caribou subspecies. It qualifies as significant because of its existence in a unique ecological setting, and because the loss of this population would leave a significant gap in the range of the woodland caribou subspecies. For consistency, we will refer to the Southern Mountain DU, described by COSEWIC, as the Southern Mountain Caribou DPS. See Figure 1 for a map of the known distribution of local populations within the Southern Mountain Caribou DPS.

The petition asserted that the Act does not permit designation of a DPS of a subspecies, but only of a full species. The Service has long interpreted the Act to authorize designation of a DPS of a subspecies, and the courts have upheld the Service's interpretation. See, for example, *Center for Biological Diversity* v. *U.S. Fish and Wildlife Service,* 274 Fed. Appx. 542 (9th Cir. 2008). Consequently, we deny the petition to the extent that it relies on this argument.

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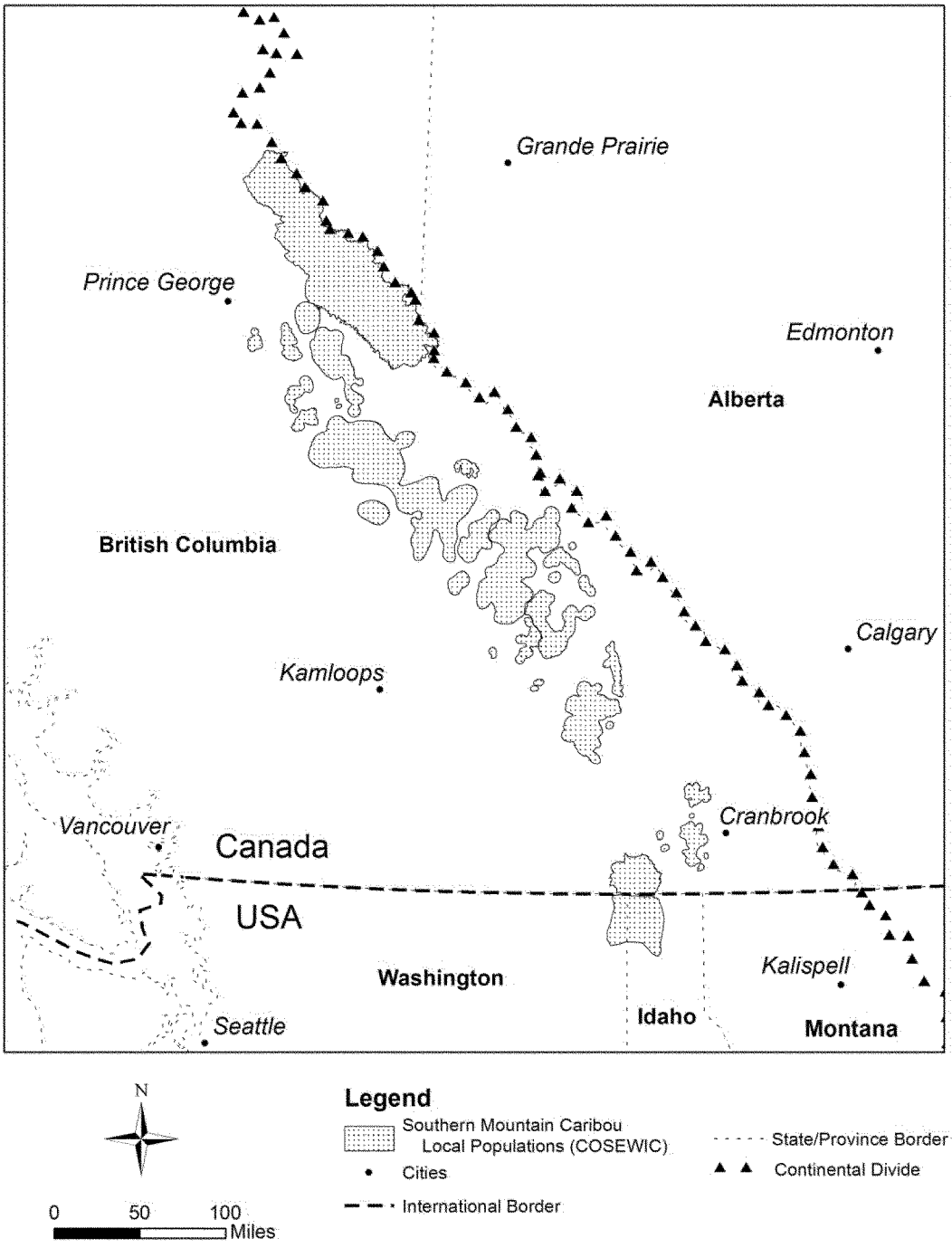
Figure 1. Known distribution of Southern Mountain Caribou local populations. Local population boundaries depicted were provided to the Service by the COSEWIC.



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Status of the Southern Mountain Caribou DPS

Declines in caribou populations within British Columbia began in the mid-1960s (Harding 2008, p. 1). Recent survey efforts confirm these declines continue today. Over the past decade, the abundance of individuals in the Southern Mountain Caribou DPS has declined by approximately 8 percent per year across its range. Individual populations have decreased by up to 18 percent per year (Wittmer *et al.* 2005b, p. 413). For example, the South Purcells local population, which is located above the Montana border, had an estimated 100 individuals in 1982, and only 20 in 2002. The larger Wells Gray South local population was estimated at 275 individuals in 1982, but had increased and was considered stable at 325 to 350 caribou from 1995 to 2002. As of 2011, this local population was estimated to be at 204 caribou (Ritchie 2013, *in litt.*).

Surveys of the local populations in the Southern Mountain Caribou DPS estimated that, in 1995, the entire population was approximately 2,554

individuals (Hatter *et al.* 2004, p. 7). By 2002, this number had decreased to approximately 1,900 individuals (Hatter *et al.* 2004, p. 7). Currently, the population is estimated to be 1,657 individuals (Ritchie 2013, *in litt.*). Many local populations within the Southern Mountain Caribou DPS are reported to have experienced declines of 50 percent or greater between 1995 and 2002 (MCST 2005, p. 1). Some of the most extreme decreases were observed in the Central Selkirk and South Purcells local populations. These populations experienced 61 and 78 percent reductions in their populations, respectively, during this time (Harding 2008, p. 3).

Population models indicate declines will continue into the future for the entire Southern Mountain Caribou DPS and for many local populations. Hatter *et al.* (2004, p. 9) predicted local population levels within this DPS under three different scenarios: ''optimistic,'' ''most likely,'' and ''pessimistic.'' Under these scenarios population levels were modeled to decline from the current level of 1,657 individuals to 1,534 (optimistic), 1,169 (most likely), or 820 (pessimistic), by 2022. In addition, all three scenarios reported the extirpation of two (optimistic), three (most likely), or five (pessimistic) local populations by 2022 (Hatter *et al.* 2004, p. 9). As of 2013, George Mountain, one of the local populations within the Southern Mountain Caribou DPS recently considered to be at risk by Hatter *et al.* (2004), is now considered to be extirpated (Ritchie 2013, *in litt.*).

According to Hatter *et al.* (2004, pp. 9 and 11), no models predicted extinction of the woodland caribou population within the proposed DPS in the next 100 years (Hatter *et al.* 2004, p. 11). However, reductions in the size of the entire population were predicted. Using the same scenarios from Hatter *et al.* (2004) as described above (''optimistic,'' ''most likely,'' and ''pessimistic''), the average time until the population of woodland caribou within the Southern Mountain Caribou DPS is fewer than 1,000 individuals was projected to be 100, 84, and 26 years, respectively (Hatter *et al.* 2004, p. 11). These estimates do not account for the relationship between density and adult female survival, and may be a conservative estimate of time to extinction (in other words, may underestimate the timeframes). Wittmer (2004, p. 88) attempted to account for density-dependent adult female survival and predicted extinction of all local populations in the proposed DPS within the next 100 years (Wittmer 2004, p. 88).

Along with these documented and predicted population declines, local populations of woodland caribou within the proposed DPS are becoming increasingly fragmented and isolated (Wittmer 2004, p. 28; van Oort *et al.* 2011, p. 25; Serrouya *et al.* 2012, p. 2598). Fragmentation and isolation are particularly pronounced in the southern portion of the Southern Mountain Caribou DPS (Wittmer 2004, p. 28). This fragmentation and isolation are likely accelerating the extinction process and reducing the probability of demographic rescue from natural immigration or emigration. Van Oort *et al.* (2011, p. 215), observed that population fragmentation and isolation in a population with little or no ability to disperse between local populations may represent a geographic pattern of the extinction process.

Despite these predictions, some local populations of woodland caribou within the proposed DPS appear to be stable. For example, the North Mountain region (northern-most populations principally in the Hart Range) was estimated at 500 animals in 2005 and is considered stable (MCST 2005, p. 4; Ritchie 2013, pers. comm.).

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, we may list a species based on any of the following five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination. We discuss each of these factors for the Southern Mountain Caribou DPS below.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Threats to caribou habitat within the Southern Mountain DPS include forest harvest, forest fires, human development, recreation, and climate change. In addition to causing direct impacts, these threats often catalyze indirect impacts to caribou, which are also important in this analysis. Both direct and indirect impacts to caribou from habitat destruction, modification, and curtailment are described below.

Historically, the caribou populations that make up the Southern Mountain Caribou DPS were distributed throughout the western Rocky Mountains of British Columbia, northern Idaho, and northeastern Washington (Apps and McLellan 2006, p. 84). As previously discussed, caribou within the Southern Mountain Caribou DPS are strongly associated with high-elevation, high-precipitation, old-growth forested landscapes (Stevenson *et al.* 2001, pp. 3–5; Apps and McLellan 2006, pp. 84, 91; Cichowski *et al.* 2004, pp. 224, 231; COSEWIC 2011, p. 50) that support their uniquely exclusive winter diet of arboreal lichens (Cichowski *et al.* 2004, p. 229).

It is estimated that about 98 percent of the caribou in the Southern Mountain Caribou DPS rely on arboreal lichens as their primary winter food. They have adapted to the high-elevation, deep-snow habitat that occurs within this area of British Columbia, northern Idaho, and northeastern Washington (Apps and McLellan 2006, p. 84). The present distribution of woodland caribou in Canada is much reduced from historical accounts, with reports indicating that the extent of occurrence in British Columbia and Ontario populations has decreased by up to 40 percent in the last few centuries (COSEWIC 2002, pp. viii, 30). The greatest reduction has occurred in local populations comprising the Southern Mountain Caribou DPS (COSEWIC 2002, p. 30; COSEWIC 2011, p. 49). Hunting was historically considered the main cause of range retraction in the central and southern portions of British Columbia. However, predation, habitat fragmentation from forestry operations, and human development are now considered the main concerns (COSEWIC 2002, p. 30).

Forest Harvest

Forestry has been the dominant land use within the range of the Southern Mountain Caribou DPS in British Columbia throughout the 20th century. The majority of timber harvesting has occurred since the late 1960s (Stevenson *et al.* 2001, pp. 9–10). Prior to 1966 and before pulp mills were built in the interior of British Columbia, a variety of forest harvesting systems were utilized, targeting primarily spruce and Douglas fir (*Pseudotsuga menziesii*) sawlogs, and pole-sized western red cedar. It was not until after 1966, when market conditions changed to meet the demand for pulp and other timber products, that the majority of timber harvesting occurred through clear-cutting large

blocks of forest (Stevenson *et al.* 2001, p. 10). However, in the 1970s, some areas in the southern Selkirk Mountains and the North Thompson area (north of Revelstoke, British Columbia) were only partially cut in an effort to maintain habitat for caribou (Stevenson *et al.* 2001, p. 10). In the 1990s, there was an increase in both experimental and operational partial cutting in caribou habitat. Partial cuts continue to remain a small proportion of total area harvested each year within caribou habitat in British Columbia (Stevenson *et al.* 2001, p. 10).

Historically, within the U.S. portion of the Southern Mountain Caribou DPS, habitat impacts have been primarily due to logging and fire (Evans 1960, p. 109). In the early 19th century, intensive logging occurred from approximately 1907 through 1922, when the foothills and lowlands were logged upwards in elevation to the present U.S. National Forest boundaries (Evans 1960, p. 110). Partly as a result of this logging, farmlands replaced moister valleys that once resembled the rain forests of the Pacific coast (Evans 1960, p. 111). From the 1920s through 1960, logging continued into caribou habitat on the Kanisku National Forest in Idaho (now the Idaho Panhandle National Forest) (Evans 1960, pp. 118–120). In addition, insect and disease outbreaks affected large areas of white pine (*Pinus strobus*) stands in caribou habitat, and Engelmann spruce habitat was heavily affected by windstorms, insect outbreaks, and subsequent salvage logging (Evans 1960, pp. 123–124). As a result, spruce became the center of importance in the lumber industry of this region. This led to further harvest of spruce habitat in adjacent, higher elevation drainages previously unaffected by insect outbreaks (Evans 1960, pp. 124–131). It is not known how much forest within the range of the Southern Mountain Caribou DPS has been historically harvested; however, forest harvest likely had and continues to have direct and indirect impacts on caribou and their habitat, contributing to the curtailment and modification of the habitat of the Southern Mountain Caribou DPS.

The harvesting of forests has both direct and indirect effects on caribou habitat within the Southern Mountain Caribou DPS. A direct effect of forest harvest is the direct loss of large expanses of contiguous old-growth forest habitats. Caribou in the Southern Mountain Caribou DPS rely upon these habitats as an important means of limiting the effect of predation. Their strategy is to spread over large areas at high elevation that other prey species avoid (Seip and Cichowski 1996, p. 79; MCTAC 2002, pp. 20–21). These old-growth forests have evolved with few and small-scale natural disturbances such as wildfires, insects, or diseases. When these disturbances did occur, they created only small and natural gaps in the forest canopy that allowed trees to regenerate and grow (Seip 1998, pp. 204–205). Forest harvesting through large-scale clear-cutting creates additional and larger openings in old-growth forest habitat. These openings allow for additional growth of early seral habitat.

Research of woodland caribou has shown that caribou alter their movement patterns to avoid areas of disturbance where forest harvest has occurred (Smith *et al.* 2000, p. 1435; Courtois *et al.* 2007, p. 496). With less contiguous old-growth habitat, caribou are also limited to increasingly fewer places on the landscape. Further, woodland caribou that do remain in harvested areas have been documented to have decreased survival due to predation vulnerability (Courtois *et al.* 2007, p. 496). This is because the early seral habitat, which establishes itself in recently harvested or disturbed areas, also attracts other ungulate species such as deer, elk, and moose to areas that were previously unsuitable for these species (MCST 2005, pp. 4–5; Bowman *et al.* 2010, p. 464). With the increase in the distribution and abundance of prey species in or near habitats located where caribou occur, comes an increase in predators and therefore an increase in predation on caribou. Predation has been reported as one of the most important direct causes of population decline for caribou in the Southern Mountain Caribou DPS (see also *C. Disease or Predation,* below; MCST 2005, p. 4; Wittmer *et al.* 2005a, p. 257; Wittmer *et al.* 2005b, p. 417; Wittmer *et al.* 2007, p. 576).

Roads created to support forest harvest activities have also fragmented habitat. Roads create linear features that also provide easy travel corridors for predators into and through difficult habitats where caribou seek refuge from predators (MCST 2005, p. 5; Wittmer *et al.* 2007, p. 576). It has been estimated that forest roads throughout British Columbia (which includes the Southern Mountain Caribou DPS) expanded by 4,100 percent (from 528 to 21,748 mi (850 to 35,000 km)) between 1950 and 1990. Most of these roads were associated with forest harvesting (Stevenson *et al.* 2001, p. 10). In the United States, roads associated with logging and forest administration developed continuously from 1900 through 1960. These roads allowed logging in new areas and upper-elevation drainages (Evans 1960, pp. 123–124). In both Canada and the United States, these roads have also generated more human activity and human disturbance in habitat that was previously less accessible to humans (MCST 2005, p. 5). See *E. Other Natural or Manmade Factors Affecting Its Continued Existence* for additional discussion.

The harvest of late-successional (old-growth) forests directly affects availability of arboreal lichens, the primary winter food item for caribou within the Southern Mountain Caribous DPS. Caribou within this area rely on arboreal lichens for winter forage for 3 or more months of the year (Apps *et al.* 2001, p. 65; Stevenson *et al.* 2001, p. 1; MCST 2005, p. 2). In recent decades, however, local caribou populations in the Southern Mountain Caribou DPS have declined faster than mature forests have been harvested. This suggests that arboreal lichens are not the limiting factor for woodland caribou in this area (MCST 2005, p. 4; Wittmer *et al.* 2005a, p. 265; Wittmer *et al.* 2007, p. 576).

Forest Fires

Forest fires have the same effect on mountain caribou habitat in the Southern Mountain Caribou DPS as forest harvesting. Fires cause direct loss of important old-growth habitat and increase openings that allow for the growth of early seral habitat, which is conducive to use by other ungulates, such as deer and moose, but not by mountain caribou, which require old growth, mature forests. Historically, natural fires occurred at very low frequency and extent throughout the range of the Southern Mountain Caribou DPS. This was due to the very wet conditions of the interior wet-belt (Stevenson *et al.* 2001, p. 3). When fires did occur, most were relatively small in size (Seip 1998, p. 204). Fires can remove suitable habitat for 25 to 100 years or longer depending on fire intensity, geography, and type of forage normally consumed by caribou (COSEWIC 2002, p. 45). As previously discussed, changes in habitat conditions have led to altered predator-prey dynamics, resulting in more predation on caribou in the Southern Mountain Caribou DPS. One of the first notable declines of caribou was reported in Wells Gray Park, British Columbia (within the Southern Mountain Caribou DPS), and was attributed to fires in the 1930s that burned approximately 70 percent of forests below 4,000 ft (1,219 m) within the park (Edwards 1954, entire). These fires changed forest composition, leading to increased

populations of other ungulates, such as mule deer and moose (Edwards 1954, p. 523), which altered the predator-prey dynamics. The 1967 Sundance, Kanisku Mountain, and Trapper Peak fires in the Selkirk Mountains destroyed almost 80,000 ac (32,375 ha) of caribou habitat (Layser 1974, p. 51). In 2006, the Kutetl fire in West Arm Park (British Columbia) destroyed nearly 19,768 ac (8,000 ha) of caribou habitat (Wildeman *et al.* 2010, pp. 1, 14, 33, 36, 61). Forest fires are a natural phenomenon and historically occurred at low frequency and extent throughout the range of the Southern Mountain Caribou DPS prior to human settlement. However, fires are predicted to increase in frequency and magnitude due to ongoing climate change (see ''Climate Change'' below), thereby continuing to impact caribou habitat in the Southern Mountain Caribou DPS into the future.

Insect Outbreaks

Engelmann spruce beetles (*Dendroctonus engelmannii*) have been known to kill large amounts of old-growth forest and caribou habitat in western Canada and the northwestern United States. Spruce bark beetle (*Dendroctonus rufipennis*) outbreaks and resulting tree mortality within the Southern Mountain Caribou DPS occurred in the late 1940s, 1950s, 1960s, and 1980s. Some of these outbreaks followed wind-throw events of trees or forest fires in the United States (Evans 1960, p. 124; USFWS 1985, p. 21).

More recently, mountain pine beetle outbreaks and mass tree mortality in western Canada have occurred in the 1990s and 2000s. Caribou habitat affected by mountain pine beetle outbreaks may remain viable for caribou, or may even provide better forage for a period of time, perhaps as long as a decade. This is because dead and dying trees may remain standing and continue to provide arboreal lichens to foraging caribou. However, eventually these trees fall and arboreal lichens become scarcer, forcing caribou to seek alternate habitat (Hummel and Ray 2008, p. 252).

These beetle outbreaks have impacted caribou within the Southern Mountain Caribou DPS by directly removing habitat and associated arboreal lichens from the landscape (Evans 1960, p. 132). In addition to eliminating caribou habitat, these beetle outbreaks have brought increased logging operations to high-elevation forests. This logging was done in an attempt to salvage the valuable wood resource in these forest stands. However, this activity also brought human presence and an increase in the potential for poaching and disturbance (Evans 1960, p. 131; USFWS 1985, p. 21). Interestingly, because of the spruce bark beetle outbreaks and a sudden increase in spruce harvest, the logging industry, in an attempt to sell the wood that was being salvaged from the mid-century spruce bark beetle outbreaks, aggressively promoted and developed a market for spruce wood. The associated demand they created for spruce wood continued after the salvaged wood was exhausted, probably leading to continued logging of spruce forests at high elevations. This continued logging of spruce continued the elimination of habitat and prolonged disturbance to caribou beyond the direct impacts from the beetle infestations (Evans 1960, p. 131).

Management of beetle outbreaks for caribou has involved attempting to preserve alternate habitat until forests that have been affected have time to regenerate and once again become suitable for caribou (Hummel and Ray 2008, p. 252). It is not clear to what extent insect infestations will continue into the future; however, climate change models predict more frequent mountain pine beetle (*Dendroctonus ponderosae*) outbreaks at higher elevations in the future (Littell *et al.* 2009, p. 14).

Human Development

Human development fragments habitat within and between local caribou populations in the Southern Mountain Caribou DPS and creates potential impediments to unrestricted caribou movements (MCST 2005, p. 5). Impediments in valley bottoms, such as human settlements, highways, railways, and reservoirs, have led to an isolation of local populations (MCST 2005, p. 5; Wittmer *et al.* 2005b, p. 414) and reduced chance of rescue (the movement of individuals, often juveniles, to other local populations which can provide genetic flow and recruitment to populations with very low numbers) from natural immigration or emigration (van Oort *et al.* 2011, pp. 220–223; Serrouya *et al.* 2012, p. 2598). Similar to forest harvest and fires, human development and its associated infrastructure also impact caribou in the following ways: It eliminates caribou habitat, alters the distribution and abundance of other ungulate species, provides travel corridors for predators (MCST 2005, p. 5), and increases human access to habitat that was previously difficult to access.

Caribou have also been killed by vehicles on highways within the range of the Southern Mountain Caribou DPS (Johnson 1985, entire; Wittmer *et al.* 2005b, p. 412; CBC News 2009, *in litt.*). The 1963 opening of the Creston-Salmo section of Highway 3 in British Columbia has led to increased vehicle collisions with mountain caribou. Seven caribou were struck and killed on this section of Highway 3 within the first 9 years (Johnson 1985, entire). More recently, in 2009, a pregnant caribou cow and calf were killed by a vehicle travelling on Highway 3 near Kootenay Pass in British Columbia (CBC News 2009, *in litt.*). Deaths of individual caribou from car collisions can have notable adverse effects on local populations. This is because of the small population sizes of the southern-most populations within the Southern Mountain Caribou DPS and the low productivity and calf survival rates as discussed in the Background section.

Highways and their associated vehicle traffic can also fragment caribou habitat and act as impediments to animal movement (Forman and Alexander 1998, p. 215; Dyer *et al.* 2002, p. 839; Fahrig and Rytwinski 2009, entire). Species like the Southern Mountain Caribou DPS, which have relatively large ranges, low reproductive rates, and low natural densities, are more likely to be negatively affected by roads (Fahrig and Rytwinski 2009, entire). It has been postulated that the Trans-Canada Highway may also be acting as an impediment to caribou movements in certain areas of the Southern Mountain Caribou DPS (Apps and McLellan 2006, p. 93).

Mining activities, although they may not be focused in valleys, can also fragment caribou habitat and limit their dispersal and movement. Additionally, these activities may play a role in the alteration of the distribution and abundance of other ungulate species. These activities may also provide travel corridors for predators (MCST 2005, p. 5), as well as increase human accessibility to habitat that was previously difficult to access. The extent of direct and indirect impacts to caribou from mining activities within the Southern Mountain Caribou DPS is, at this time, not well known.

Human Recreation

Human-related activities are known to impact caribou. Specifically, as described below, wintertime recreational activities such as snowmobiling, heli- or cat-skiing, and back-country skiing are likely to impact short-term behavior, long-term habitat use (MCST 2005, p. 5), and physiology (Freeman 2008, p. 44) of caribou. It is uncertain if these activities are affecting all populations within the Southern Mountain Caribou DPS. There is also some literature that suggests compacted

trails resulting from high amounts of wintertime recreational activities such as snowmobiling and snowshoeing may act as travel corridors for predators such as wolves. These trails allow easier access into winter caribou habitat that was previously more difficult for predators to navigate (Simpson and Terry 2000, p. 2; Cichowski *et al.* 2004, p. 241).

Snowmobile activity represents the greatest threat to caribou within the Southern Mountain Caribou DPS relative to other winter recreation activities. Concern centers on the overlap between preferred snowmobile habitat and preferred caribou habitat (Simpson and Terry 2000, p. 1). Deep snow, open forest, and scenic vistas are characteristics found in caribou winter habitat. These same characteristics are also preferred by snowmobilers (Seip *et al.* 2007, p. 1539), and snowmobilers can easily access these areas (Simpson and Terry 2000, p. 1). New forest roads may even be providing increased access to these areas (Seip *et al.* 2007, p. 1539).

Within the Southern Mountain Caribou DPS, caribou have been shown to alter their behavior by fleeing from (Simpson 1987, pp. 8–10), and dispersing from, high-quality winter habitat because of snowmobile activity (Seip *et al.* 2007, p. 1543). Altered behavior in response to winter recreation in the form of fleeing can have energetic costs to caribou (Reimers *et al.* 2003, pp. 751–753). Perhaps more significantly, however, altered long-term habitat occupancy due to snowmobiling may be forcing caribou within the Southern Mountain Caribou DPS into inferior habitat where there may be energetic costs as well as elevated risks of predation or mortality from avalanches (Seip *et al.* 2007, p. 1543). Anecdotal reports of caribou being notably absent in areas where they had been historically present, but where snowmobile activity had begun or increased (Kinley 2003, p. 20; USFS 2004, p. 12; Seip *et al.* 2007, p. 1539), support this concept. Further, Freeman (2008, p. 44) showed that caribou exhibit signs of physiological stress within and as far away as 6 mi (10 km) from snowmobile activity. Physiological stress in this study was estimated using fecal glucocorticoids (GC). Glucocorticoids, when chronically elevated, can reduce fitness of an individual by impacting feeding behavior, growth, body condition, resistance to disease, reproduction, and survival (Freeman 2008, p. 33). Caribou within 6 mi (10 km) of open snowmobile areas within the Southern Mountain Caribou DPS showed chronically elevated GC levels. This suggests that snowmobile activity in certain areas of the Southern Mountain Caribou DPS is causing some level of physiological stress to caribou and may be impacting caribou in some way. However, elevated GC levels may be caused by many different environmental factors and may not always translate to impacts (Romero 2004, p. 250; Freeman 2008, p. 48). The extent of impacts from chronically elevated GC levels in caribou appears to need further study (Freeman 2008, p. 46). Research suggests that impacts from snowmobiling are observed in other populations of caribou outside of the Southern Mountain Caribou DPS as well (Mahoney *et al.* 2001, pp. 39–42; Reimers *et al.* 2003, p. 751).

Given what we do understand about the impacts to caribou from human disturbance (Simpson 1987, pp. 8–10), and what has been studied in other ungulate species relative to helicopter disturbance (Cote 1996, p. 683; Webster 1997, p. 7; Frid 2003, p. 393), it is also probable that the presence of humans and machines (helicopters or snow-cats) in caribou habitat from heli- or cat-skiing is a potential source of disturbance to caribou in certain portions of the Southern Mountain Caribou DPS. This disturbance is likely negatively impacting caribou by altering their behavior and habitat use patterns. Indeed, it has also been documented that caribou within heli-ski areas exhibit elevated GC levels. This suggests that heli-skiing activity in certain areas of the Southern Mountain Caribou DPS is causing some level of physiological stress to caribou (Freeman 2008, p. 44). Additionally, since heli- and cat-skiing often require tree cutting for run and/or road maintenance, habitat alteration may be another threat posed from this activity (Hamilton and Pasztor 2009, entire). Further study may be necessary to completely understand the impacts to caribou from heli- and cat-skiing.

Disturbance impacts to caribou from backcountry skiing also are relatively unstudied. Our current knowledge of caribou responses to human disturbance suggests that backcountry skiing may be a potential source of disturbance to caribou, negatively impacting them by altering their behavior. These impacts are likely similar to behavioral alterations from heli- or cat-skiing (Simpson and Terry 2000, p. 3; USFS 2004, p. 24). Duchesne *et al.* (2000, p. 313–314) found that the presence of humans on snowshoes and skis did impact caribou behavior by altering foraging and vigilance, albeit this study was conducted outside the Southern Mountain Caribou DPS where caribou foraging behavior is different. This study also suggested that caribou may habituate to this level of human disturbance (Duchesne *et al.* 2000, p. 314). Given the possibility of habituation, the relatively slow pace of activity participants, and the non-motorized nature of backcountry skiing or snowshoeing, it is suspected that this recreation activity at its current level poses a relatively small threat to caribou within certain areas of the Southern Mountain Caribou DPS (Simpson and Terry 2000, p. 3; USFS 2004, p. 24). However, since the magnitude of impacts may be correlated with the number of activity participants in an area (Simpson and Terry 2000, p. 3), this activity may be a larger threat to caribou within the Southern Mountain Caribou DPS in the future as some areas become more accessible from an expanded network of roads and increasing populations.

Each of these activities—snowmobiling, heli- or cat-skiing, and backcountry skiing—has the potential to disturb caribou. The extent to which caribou are impacted is likely correlated with the intensity of activity (Simpson 1987, p. 9; Duchesne *et al.* 2000, p. 315; Reimers *et al.* 2003, p. 753). Nature-based recreation and tourism are on the rise in rural British Columbia, with projected growth of approximately 15 percent per year (Mitchell and Hamilton 2007, p. 3). New forest roads may be providing increased access to caribou habitat as well (Seip *et al.* 2007, p. 1539). As such, the threat of human disturbance may be a contributing factor in caribou population declines within the Southern Mountain Caribou DPS in the future.

Climate Change

Our analyses under the Act include consideration of the effects of ongoing and projected changes in climate. The terms ''climate'' and ''climate change'' are defined by the Intergovernmental Panel on Climate Change (IPCC). ''Climate'' refers to the mean and variability of different types of weather conditions over time. Thirty years is a typical period for such measurements, although shorter or longer periods also may be used (IPCC 2007, p. 78). The term ''climate change'' thus refers to a change in the mean or variability of one or more measures of climate (e.g., temperature or precipitation) that persists for an extended period, typically decades or longer, whether the change is due to natural variability, human activity, or both (IPCC 2007, p. 78). Various types of changes in climate can have direct or indirect effects on species. These effects may be positive, neutral, or negative and they may

change over time. This change depends on the species and other relevant considerations, such as the effects of interactions of climate with other variables (e.g., habitat fragmentation) (IPCC 2007, pp. 8–14, 18–19). In our analyses, we used our expert judgment to weigh relevant information, including uncertainty, in our consideration of various aspects of climate change.

Between the 1600s and the mid-1800s, Europe and North America were in a period called the ''Little Ice Age.'' During this period, Europe and North America experienced relatively colder temperatures (IPCC 2001, p. 135). The cooling during this time is considered to be modest, with average temperature decreases of less than 1.8 degrees Fahrenheit (F) (1 degree Celsius (C)) relative to 20th century levels. Cooling may have been more pronounced in certain regions and during certain periods, such as in North America during the 1800s (IPCC 2001, p. 135).

In the Pacific Northwest, regionally averaged temperatures have risen 1.5 degrees Fahrenheit (F) (0.8 degrees Celsius (C)) over the last century (as much as 4 degrees F (2 degrees C) in some areas). Temperatures are projected to increase by another 3 to 10 degrees F (1.5 to 5.5 degrees C) by 2080 (Mote and Salathé 2009, pp. 21, 33). Warmer winter temperatures are reducing snow pack in western North American mountains. This is occurring because a higher proportion of precipitation is falling as rain and because there are higher rates of snowmelt during winter (Hamlet and Lettenmaier 1999, p. 1609; Brown 2000, p. 2347; Mote 2003, pp. 3–1; Christensen *et al.* 2004, p. 347; Knowles *et al.* 2006, pp. 4548–4549). This trend is expected to continue with future warming (Hamlet and Lettenmaier 1999, p. 1611; Christensen *et al.* 2004, p. 347; Mote *et al.* 2005, p. 48). In British Columbia, the last 50 years have seen changes in precipitation distribution. Specifically, there has been a decreasing trend in winter precipitation and an increasing trend in spring and summer precipitation (Columbia Mountains Institute of Applied Ecology 2006, p. 45). Virtually all future climate scenarios for the Pacific Northwest predict increases in wildfire in western North America, especially east of the Cascades. This predicted increase is due to higher summer temperatures, earlier spring snowmelt, and lower summer flows which can lead to drought stress in trees (Littell *et al.* 2009, p. 14). Lastly, climate change may lead to increased frequency and duration of severe storms and droughts (Golladay *et al.* 2004, p. 504; McLaughlin *et al.* 2002, p. 6074; Cook *et al.* 2004, p. 1015).

Review of climate change modeling presented in Utzig (2005, p. 5) demonstrated projected shifts in habitats within the present range of the Southern Mountain Caribou DPS in Canada. Projections for 2055 indicate a significant decrease in alpine habitats, which is loosely correlated with the distribution of the arboreal lichens on which these caribou depend. The projected biogeoclimatic zone distributions indicate a significant increase in the distribution of western red cedar in the mid-term with a shift upward in elevation and northward over the longer term. Projected subalpine fir distribution is similar, with a predicted shift upward in elevation and long-term decreasing presence in the south and on the drier plateau portions of the present range of the Southern Mountain Caribou DPS. Recent analysis by Rogers *et al.* (2011, pp. 5–6) of three climate projection models indicate that subalpine forests (which contain subalpine fir) may be almost completely lost in the Pacific Northwest (Washington and Oregon) by the end of the 21st century. This loss would be detrimental to the Southern Mountain Caribou DPS given their reliance on this habitat type for forage of arboreal lichens during the late winter and for summer habitat (Utzig 2005, p. 2). However, both western red cedar and subalpine fir are projected to maintain a significant presence in the Southern Mountain Caribou DPS, with increased densities projected northward. This indicates the potential for range expansion of caribou in those northern areas (Utzig 2005, p. 5). Unfortunately, habitat in the southern extent of the Southern Mountain Caribou DPS may become unsuitable, thereby restricting the southern range of this Southern Mountain Caribou DPS (Rogers *et al.* 2011, pp. 5–6).

The movements of local populations within the Southern Mountain Caribou DPS are closely tied to changes in snow depth and consolidation of the snow pack, allowing access to arboreal lichens in winter (Kinley *et al.* 2007, entire). In general, climate change projections suggest reduced snowpacks and shorter winters, particularly at lower elevations (Utzig 2005, p. 7; Littell *et al.* 2009, p. 1). Snowpack depth is significant in determining the height at which arboreal lichens occur on trees, and the height at which caribou are able to access lichens in the winter. These arboreal lichens are also dependent upon factors influenced by climate, including humidity and stand density (Utzig 2005, p. 7). Kinley *et al.* (2007, entire) found that during low snow years, mountain caribou in deep-snowfall regions made more extensive use of low-elevation sites (sometimes associated with the use of stands of lodgepole pine (*Pinus contorta*) and western hemlock) during late winter. When snowpack differences were slight between years in these regions, mountain caribou did not shift downslope as they did during low snow years (Kinley *et al.* 2007, p. 93). This may indicate that mountain caribou escape reduced snowpacks (similar to what is projected with climate change) by moving to lower elevations during low snow years. However, other factors associated with climate change may negatively impact those lower elevation forests, such as increased episodes of wildfire and insect outbreaks, or large-scale changes in forest composition (Littell *et al.* 2010, entire). In addition, moving to lower elevations during late winter may also make mountain caribou more susceptible to predation due to increased presence of other ungulate species such as moose and deer at these elevations, which in turn attracts greater numbers of predators (see *C. Disease or Predation*).

Predictions for 2085 indicate an increase in drier vegetation types at lower elevations. This could potentially cause an increase in other ungulate species such as deer, moose, and elk within the range of the Southern Mountain Caribou DPS (Utzig 2005, p. 4). This may result in increased predator numbers in response to increased prey availability, and increased predation on caribou (Utzig 2005, p. 4). For example, in northern Alberta, changes in summer and winter climate are driving range expansion of white-tailed deer, with further changes expected with continuing climate change (Dawe 2011, p. 153). This increase in white-tailed deer is expected to alter predator-prey dynamics, leading to greater predation on woodland caribou by wolves (Latham *et al.* 2011, p. 204). This potential increase in predation pressure on the Southern Mountain Caribou DPS is in addition to the risk of increased predation due to forest harvesting and fires that reduces and fragments suitable habitat (Stevenson *et al.* 2001, p. 1), as described above.

Virtually all future climate scenarios for the Pacific Northwest predict increases in wildfire in western North America, especially east of the Cascades. This is due to higher summer temperatures, earlier spring snowmelt, and lower summer flows, which can lead to drought stress in trees (Littell *et al.* 2009, p. 14). In addition, due to climatic stress to trees and an increase

in temperatures more favorable to mountain pine beetles, outbreaks are projected to increase in frequency and cause increased tree mortality (Littell *et al.* 2009, p. 14). These outbreaks will reach higher elevations due to a shift to favorable temperature conditions as these regions warm (Littell *et al.* 2009, p. 14). Other species of insects, such as spruce beetle and western spruce budworm (*Choristoneura occidentalis*), may also emerge in forests where temperatures are favorable (Littell *et al.* 2009, p. 15). These projected impacts to forested ecosystems have the potential to further impact habitat for the Southern Mountain Caribou DPS (Utzig 2005, p. 8).

The information currently available on the effects of global climate change and increasing temperatures does not make precise estimates of the location and magnitude of the effects. However, we do expect climate change to cause the following: A shorter snow season with shallower snowpacks, increased forest disturbance, and vegetation growing in far from optimal climactic conditions (Columbia Mountains Institute of Applied Ecology 2006, p. 49). Utzig (2005, entire) provided the most applicable summary of the potential effects of climate change to the Southern Mountain Caribou DPS. In his paper, he noted that there are general indications that the present range of mountain caribou may be reduced in some areas and increased in others (p. 10), as the ecosystem upon which they rely undergoes drastic future changes due to changes in the form and timing of precipitation events (snow versus rain), and vegetative responses to climatic conditions (e.g., drier conditions will mean increased occurrence of fire and disease in mature trees that support arboreal lichens (p. 8)). These climatic conditions may also increase other ungulate species (deer, moose) and lead to higher levels of predator prey interactions (p. 4). He also identified several uncertainties (Utzig 2005, pp. 10–11), such as the impossibility of reliably predicting specific ecosystem changes and potential impacts. Utzig acknowledged that caribou did survive the last glacial period, as well as intervening climate change over the last 10,000 years, although those changes likely occurred over a longer period of time than are those changes occurring today.

We anticipate that climate change could directly impact the Southern Mountain Caribou DPS in the following ways: By negatively affecting the abundance, distribution, and quality of caribou habitat; the ability of caribou to move between seasonal habitats; and their ability to avoid predation. Impacts from climate change may also affect caribou and their habitat by affecting external factors such as increased disease and insect outbreaks, increased fire occurrence, and changes in snow depth. The impacts from these effects could lead to increased habitat fragmentation and changes in forest composition, changes in forage ability and abundance, and changes in predation, which are each important to caribou survival. Because of the close ties between caribou movement and seasonal snow conditions, seasonal shifts in snow conditions will likely be significant to the caribou in the Southern Mountain Caribou DPS (Utzig 2005, pp. 4, 8). A trend towards hotter and drier summers, increasing fire events, and unpredictable snow conditions has the potential to reduce both recruitment and survival of the Southern Mountain Caribou DPS of mountain caribou (Festa-Bianchet *et al.* 2011, p. 427). A warming climate will affect all aspects of caribou ecology and exacerbate the impact of other threats (Festa-Bianchet *et al.* 2011, p. 424).

Conservation Efforts To Reduce Habitat Destruction, Modification, or Curtailment of Its Range

Efforts in the United States

Efforts to protect the Southern Mountain Caribou DPS and its habitat in the United States include: (1) Retaining mature to old-growth cedar/hemlock and subalpine spruce/fir stands; (2) analyzing forest management actions on a site-specific basis to consider potential impacts to caribou habitat; (3) avoiding road construction through mature old-growth forest stands unless no other reasonable access is available; (4) placing emphasis on road closures and habitat mitigation based on caribou seasonal habitat needs and requirements; (5) controlling wildfires within southern Selkirk Mountains woodland caribou management areas to prevent loss of coniferous tree species in all size classes; and (6) managing winter recreation in the Colville National Forest (CNF) in Washington, with specific attention to snowmobile use within the Newport/Sullivan Lake Ranger District.

Relative to human access within caribou habitat, motorized winter recreation, specifically snowmobiling, represents one threat to caribou within the southern Selkirk Mountains woodland caribou recovery area. USFS 1987 land resource management plans (LRMPs) included some standards calling for motorized use restrictions when needed to protect caribou. The CNF's LRMP in Washington has been revised to incorporate special management objectives and standards to address potential threats to woodland caribou on the Forest. The CNF also manages winter recreation in areas of potential conflict between snowmobile use and caribou, specifically in its Newport/Sullivan Lake Ranger District (77 FR 71042, p. 71071). The Idaho Panhandle National Forest (IPNF), beginning in 1993, implemented site-specific closures to protect caribou on IPNF. However, more comprehensive standards addressing how, when, and where, to impose such restrictions across IPNF were limited (USFS 1987, entire). In December 2005, a United States district court granted a preliminary injunction prohibiting snowmobile trail grooming within the caribou recovery area on the IPNF during the winter of 2005 to 2006. The injunction was granted because the IPNF had not developed a winter recreation strategy addressing the effects of snowmobiling on caribou. In November 2006, the Court granted a modified injunction restricting snowmobiling and snowmobile trail grooming on portions of the IPNF within the recovery area of the southern Selkirk Mountains caribou. On February 14, 2007, the Court ordered a modification of the current injunction to add a protected caribou travel corridor connecting habitat in the U.S. portion of the southern Selkirk Mountains with habitat in British Columbia. This injunction is currently in effect and restricts snowmobiling on 239,588 ac (96,957 ha), involving 71 percent of the existing woodland caribou recovery area. In its revised LRMP (USFS 2013, entire), the IPNF considered the court-ordered snowmobile closure to be the standard until a winter travel plan is approved. The Service will work closely with the IPNF on the future development of their winter recreation strategy, which will be subject to section 7 consultation with the Service.

Within the range of the southern Selkirk Mountains population of woodland caribou is the 43,348-ac (17,542-ha) Salmo-Priest Wilderness area (U.S. Department of Agriculture (USDA) 2013, *in litt.*). The USFS manages these lands under the Wilderness Act of 1964 (16 U.S.C. 1131–1136), which restricts activities in the following manner: (1) New or temporary roads cannot be built; (2) there can be no use of motor vehicles, motorized equipment, or motorboats; (3) there can be no landing of aircraft; (4) there can be no other form of mechanical

transport; and (5) no structure or installation may be built.

A recovery plan for the endangered southern Selkirk Mountains population of woodland caribou was finalized in 1994 (USFWS 1994, entire), outlining interim objectives necessary to support a self-sustaining caribou population in the Selkirk Mountains. Among these objectives was a goal to secure and enhance at least 443,000 ac (179,000 ha) of caribou habitat in the Selkirk Mountains. However, the recovery criteria in this recovery plan were determined to be inadequate in the Service's 5-year review (USFWS 2008, p. 15). Additional recovery actions are needed as the 2012 population estimate for this local population has dropped to 27 individuals (Ritchie 2013, *in litt.*). In addition, the 1994 recovery plan only applies to 1 local population (southern Selkirk Mountain population of woodland caribou) of the 15 that comprise the Southern Mountain Caribou DPS.

Efforts in Canada

In 2007, the British Columbia government endorsed the Mountain Caribou Recovery Implementation Plan (MCRIP), which encompasses the Southern Mountain Caribou DPS in Canada (British Columbia Ministry of Agriculture and Lands (BCMAL) 2007, *in litt.*). The plan's goal is to restore the Southern Mountain Caribou DPS in British Columbia to the pre-1995 level of 2,500 individuals (BCMAL 2007, *in litt.*). Actions identified in the MCRIP include, but are not limited, to: Protecting approximately 5,436,320 ac (2,200,000 ha) of range from logging and road building, which would capture 95 percent of high-suitability winter habitat; managing human recreation activities; managing predator populations of wolf and cougar where they are preventing recovery of populations; managing the primary prey base of caribou predators; and augmenting threatened herds with animals transplanted from elsewhere (BCMAL 2007, *in litt.*). The Province of British Columbia pledged to provide $1,000,000 per year, over 3 years, to support adaptive management plans associated with the MCRIP (BCMAL 2007, *in litt.*).

All National Parks in Canada are managed by Parks Canada, and are strictly protected areas where commercial resource extraction and sport hunting are not permitted (Parks Canada National Park System Plan (NPSP) 2009, p. 3). Parks Canada's objective for their National Parks is, ''To protect for all time representative natural areas of Canadian significance in a system of national parks, to encourage public understanding, appreciation and enjoyment of this natural heritage so as to leave it unimpaired for future generations'' (Parks Canada NPSP 2009, p. 2). The Southern Mountain Caribou DPS in British Columbia encompasses all or portions of four Canadian National Parks: Glacier, Mount Revelstoke, Jasper, and Banff (Parks Canada 2008, *in litt.*). Two of these National Parks, Glacier and Mount Revelstoke, comprise 333,345 ac (134,900 ha) and are within the range of several local populations of caribou in the Southern Mountain Caribou DPS (Parks Canada NPSP 2009, pp. 18–19). Ninety-four percent of the land in British Columbia is considered Provincial Crown lands, of which 33,881,167 ac (13,711,222 ha) are designated as various park and protected areas managed by British Columbia (B.C.) Parks (B.C. Parks 2013a, *in litt.*). The mission of B.C. Parks is to ''protect representative and special natural places within the province's Protected Areas System for world-class conservation, outdoor recreation, education and scientific study'' (B.C. Parks 2013b, *in litt.*). Many Canadian National parks, provincial parks, and ecological reserves are regularly or occasionally occupied by local populations or individuals of mountain caribou and provide some level of protection including: Arctic Pacific Lakes, Evanoff, Sugarbowl-Grizzly Den, Ptarmigan Creek, West Twin, Close to the Edge, Upper Rausch, Mount Tinsdale, Bowron Lake, Cariboo Mountains, Wells Gray, Upper Adams, Foster Arm, Cummins Lakes, Goosegrass, Glacier, Mount Revelstoke, Monashee, Goat Range, Purcell Wilderness, Kianuko, Lockhart Creek, West Arm, and Stagleap.

In February 2009, British Columbia's Ministry of Environment (BCMOE) protected 5,568,200 ac (2,253,355 ha) of currently available and eventually available high-suitability winter caribou habitat. This was accomplished through the issuance of 10 Government Actions Regulation orders on Provincial Crown lands within the Southern Mountain Caribou DPS (BCMOE 2009a, *in litt.;* BCMOE 2009b, *in litt.;* Mountain Caribou Recovery Implementation Plan Progress Board (MCRIPPB) 2010, pp. 7, 9). This protection was accomplished, in part, through the official designation of high-suitability habitats as either wildlife habitat areas or ungulate winter ranges, and associated general wildlife measures (BCMOE 2009b, *in litt.*). These measures are designed to reduce the impact from timber harvest and road construction on caribou habitat. They identify areas where no or modified timber harvesting can take place, along with certain motor vehicle prohibition regulations (BCMOE 2009b, *in litt.;* BCMOE 2009c, *in litt.*). This effort included the creation of two important guidance documents that provide recommendations for the establishment of mineral exploration activity and commercial backcountry recreation (i.e., heli-skiing and cat-skiing). Both of these documents call for their respective activities to maximize use of existing roads and clearings, and specify other activity-specific restrictions on habitat alteration (Hamilton and Pasztor 2009, pp. 7–8; BCMOE 2009c, *in litt.*).

In February 2009, the BCMOE closed approximately 2,471,050 ac (1,000,000 ha) of caribou habitat within the Canadian portion of the Southern Mountain Caribou DPS to snowmobile use (MCRIPPB 2010, p. 10). However, compliance with closures in these areas is not well known, and is likely not 100 percent (MCRIPPB 2012, p. 9). Efforts and progress are being made to replace stolen or vandalized signs, to improve monitoring and enforcement of compliance, and to inform and educate the users of the closed areas. Specifically, several tickets have been issued in British Columbia for noncompliance, and informational pamphlets have been made and distributed (MCRIPPB 2010, p. 10; MCRIPPB 2012, p. 9).

In addition, conservation has been accomplished through the voluntary signing of stewardship management agreements in British Columbia. These agreements are between the BCMOE and snowmobiling groups, and promote the minimization of disturbance and displacement of caribou from snowmobile activities in their habitat. Through these agreements, snowmobile groups agree to: A code of conduct while riding in designated areas, volunteer to educate riders about impacts to caribou and preventative measures to avoid impacts, volunteer to monitor designated areas for compliance, and submit reports to the BCMOE detailing caribou sightings and snowmobile use of an area. To date, 13 of these agreements have been signed between the BCMOE and snowmobile organizations (MCRIPPB 2010, p. 10).

Private Efforts

Approximately 135,908 ac (55,000 ha) of private land within the British Columbia portion of the southern Selkirk Mountains caribou recovery area were purchased by the Nature Conservancy Canada (NCC). This purchase was made with the support of the Government of Canada, in what has

been described as the largest single private conservation land acquisition in Canadian history (USFWS 2008, p. 17). This private land was previously owned by a timber company known as the Pluto Darkwoods Forestry Corporation, which managed a sustainable harvesting program prior to selling the land. The NCC's goal for the Darkwoods property is sustainable ecosystem management, including the conservation of woodland caribou (USFWS 2008, p. 17).

Summary for Factor A

Destruction, modification, or curtailment of caribou habitat has been and is today a significant threat to caribou throughout the Southern Mountain Caribou DPS. Specific threats directly impacting caribou habitat within the Southern Mountain Caribou DPS include forest harvest, forest fires, insect outbreaks, human development, recreation, and climate change. Each of these threats, through varying mechanisms, directly removes and fragments existing habitat and/or impacts caribou behavior such that it alters the distribution of caribou within their natural habitat.

Forest harvest, forest fires, insect outbreaks, human development, and climate change catalyze other, indirect threats to caribou within the Southern Mountain Caribou DPS. These impacts may be particularly prevalent in the southern extent of this DPS. Specifically, direct habitat loss and fragmentation limits caribou dispersal and movements among local populations within the Southern Mountain Caribou DPS by making it more difficult and more dangerous for caribou to disperse. Further, habitat loss and fragmentation have and will continue to alter the predator-prey ecology of the Southern Mountain Caribou DPS by creating more suitable habitat and travel corridors for other ungulates and their predators. Finally, habitat loss and fragmentation increases the likelihood of disturbance of caribou in the Southern Mountain Caribou DPS from human recreation or other activities by increasing the accessibility of these areas to humans. Climate change is forecasted to exacerbate these impacts by catalyzing forest composition changes, increasing forest insect outbreaks, and increasing the likelihood of wildfires.

Another threat, human disturbance from wintertime recreation, particularly from snowmobile activity, increases physiological stress, energy expenditure, and alters habitat occupancy of caribou. This disturbance forces caribou to use inferior habitat with greater risk of depredation or avalanche. Human disturbance is likely to continue to increasingly impact caribou within the Southern Mountain Caribou DPS, because nature-based recreation and tourism are on the rise in rural British Columbia. Projected growth of these activities is estimated at approximately 15 percent per year (Mitchell and Hamilton 2007, p. 3). In addition, the establishment of new forest roads may be providing increased human access to caribou habitat, further amplifying the threat of human disturbance and caribou population declines within the Southern Mountain Caribou DPS in the future. Impacts to caribou from human disturbance are occurring today, despite conservation measures, and are likely to occur in the future. These impacts will likely contribute to the decline of local populations within the Southern Mountain Caribou DPS and further impact the continued existence of the Southern Mountain Caribou DPS.

We have evaluated the best available scientific and commercial data on the present or threatened destruction, modification, or curtailment of the habitat or range of the Southern Mountain Caribou DPS. Through this evaluation, we have determined that this factor poses a significant threat to the continued existence of the Southern Mountain Caribou DPS, especially when considered in concert with the other factors impacting the Southern Mountain Caribou DPS.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Caribou have been an important game species since they have shared the landscape with humans. Native Americans have hunted caribou for thousands of years in British Columbia, although the numbers of animals taken were probably modest given the relatively limited hunting pressure and hunting implements at the time (Spalding 2000, p. 38). The introduction of firearms combined with a later increase in human populations in British Columbia led to an increase in caribou harvested by the late 1800s and into the 1900s (Spalding 2000, p. 38).

It is thought that an increase in hunting pressure, although it did not cause extinction, upset the already delicate balance between predators and caribou and catalyzed a general decline in caribou populations (Seip and Cichowski 1996, p. 73; Spalding 2000, p. 39). As justification for this hypothesis, Spalding (2000, p. 39) cited old field reports that hunters, both Native American and non-Native American, were killing too many caribou. He also cited several regions of British Columbia where, after hunting closures were implemented, caribou numbers began to rebound, although this was not the case in all populations (Spalding 2000, p. 37). These hunting pressures and associated population declines subsided with the hunting season closures, and some regions of British Columbia even saw population increases and stabilization after the 1940s (Spalding 2000, pp. 37, 39).

Hunting of caribou is currently not allowed in any of the lower 48 United States. Further, hunting is prohibited in all National Parks and Ecological Reserves in British Columbia; but may be allowed in some specific British Columbia parks. Hunting regulations put out by the British Columbia's Ministry of Forests, Lands and Natural Resource Operations for 2012–2014, currently allows hunting of large, 5-point adult bull caribou within a few areas within the range of the Southern Mountain Caribou local populations (British Columbia Hunting & Trapping Regulations/Synopsis (BCHT) 2012–2014). Hunting of adult bull caribous are allowed in British Columbia to hunters who have a license and have drawn the appropriate Limited Entry Hunting season authorization (BCHT 2012–2014, p. 19). The range of Mountain Caribou is reported in the BCHT regulations (p. 19) to occur within specific sections of four Management Units (MU's; MUs 3, 4, 5, 7). Caribou that have been harvested are required to be submitted for a Compulsory Inspection with the animal's front incisor tooth, antlers, and piece of hide with proof of sex within 30 days of harvest (BCHT 2012–2014, p. 21). Hunters are limited to 1, 5-point bull during the specified season. We do not know the number of licenses that are available to hunters in a given year, or the number of adult bull mountain caribou that are harvested. Also within the BCHT, there is a section titled, Mountain Caribou Update (p. 23), describing the current status of the mountain type of woodland caribou and ongoing recovery strategies. One of the strategies discussed in the BCHT regulations describes obtaining information on the predator management/predator-prey dynamics and mountain caribou. As part of this study, the Ministry of Forests, Lands and Natural Resource Operations office are requesting hunters to submit information on the harvest of wolves within the range of the caribou.

Given our current knowledge of caribou dispersal, it is unlikely that many caribou from the Southern Mountain Caribou DPS will be harvested in these areas. Consequently,

legal harvest has not been a major limiting factor to caribou within the Southern Mountain Caribou DPS since the mid-1970s (Seip and Cichowski 1996, p. 73). Therefore, although it may have had a historical impact on caribou populations, hunting/harvesting of caribou is not presently impacting caribou within the Southern Mountain Caribou DPS.

Although there are historic reports of the illegal harvest of caribou within the Southern Mountain Caribou DPS (Scott and Servheen 1985, p. 15; Seip and Cichowski 1996, p. 76), we do not have data that suggest illegal killing is affecting caribou numbers in any of the local populations within the Southern Mountain Caribou DPS.

Conservation Efforts To Reduce Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Aside from State and Provincial regulations that limit hunting of caribou, we are unaware of other conservation efforts to reduce overutilization for commercial, recreational, scientific, or educational purposes; however, we do not have information suggesting that overutilization is an ongoing threat to caribou within the Southern Mountain Caribou DPS.

Summary for Factor B

Threats from overutilization such as hunting appear to be ameliorated, now and in the future, by responsible management. Historically, caribou within the Southern Mountain Caribou DPS were hunted throughout their range. They were likely overharvested when human populations increased in British Columbia and with the advent of modern weapons. The hunting of caribou has been made illegal within the Southern Mountain Caribou DPS, in both the United States and Canada. After hunting was stopped, certain populations began to recover and grow, but others did not. Even though there have been known occurrences of humans illegally killing caribou within the Southern Mountain Caribou DPS in the past, we do not have information indicating this is an ongoing threat. We have evaluated the best available scientific and commercial data on the overutilization for commercial, recreational, scientific, or educational purposes of the Southern Mountain Caribou DPS and determined that this factor does not pose a threat to the continued existence of the Southern Mountain Caribou DPS.

C. Disease or Predation

Disease

Caribou have been occasionally documented to succumb to disease and parasitism throughout their range and within the Southern Mountain Caribou DPS (Spalding 2000, p. 40; Compton *et al.* 1995, p. 493; Dauphine 1975 *in* COSEWIC 2002, pp. 20, 54–55). The effects of many types of biting and stinging insects on caribou include parasite and disease transmission, harassment, and immune system reactions (COSEWIC 2002, p. 54). Several are considered important including: Warble flies (*Oedemagena* spp.), nose bot flies (*Cephenemyia trompe*), mosquitoes (*Aedes* spp.), black flies (*Simulium* spp.), horseflies (*Tabanus* spp.), and deer flies (*Chrysops* spp.) (COSEWIC 2002, p. 54). Mature and old woodland caribou are likely to have a relatively high incidence and prevalence of hydatid cysts (*Echinococcus granulosus*) in their lungs, which can make them more susceptible to predation (COSEWIC 2002, p. 54). Eggs and larvae of the protostrongylid nematode (*Parelaphostrongylus andersoni*) can develop in woodland caribou lungs and can contribute to pneumonia (COSEWIC 2002, pp. 54–55). Finally, a related meningeal nematode (*P. tenuis*) causes neurologic disease in caribou. Although this nematode is benign in white-tailed deer, it may be a limiting factor to caribou in southern Ontario and west to Saskatchewan. Samuel *et al.* (1992, p. 629) suggested that this meningeal nematode may anthropogenically spread in western Canada due to game ranching; however, we have no new information to determine if this spread has or has not occurred.

Within the Southern Mountain Caribou DPS, evidence of disease or parasitism is limited. We know that several caribou that were shot or found dead in a forest near Rooney, British Columbia, in 1918 were thought to have a type of pneumonia (Spalding 2000, p. 40). We also know that, of 34 caribou that died within 2 years of translocation to the southern Selkirk Mountains, only 1 was confirmed to have died of severe parasitism (*Sarcocystis* sp.) and emaciation (Compton *et al.* 1995, p. 493). Although evidence within the Southern Mountain DPS is limited, we are aware that a reintroduction effort of 51 caribou outside of the Southern Mountain Caribou DPS in the late 1960s failed, presumably because of meningeal worms (*Parelaphostrongylus tenuis*) (Dauphine 1975 *in* COSEWIC 2002, p. 20).

As is the case with most wildlife, caribou are susceptible to disease and parasitism. These sources of mortality are likely causing some level of impact to individual caribou within the Southern Mountain Caribou DPS. However, because no severe outbreaks have been documented and because relatively few caribou within the Southern Mountain Caribou DPS have been known to succumb to disease or parasitism, these sources of mortality are unlikely to have significantly impacted caribou within the Southern Mountain Caribou DPS, currently or historically.

Predation

Natural predators of caribou in the Southern Mountain Caribou DPS include cougars (*Felis concolor*), wolves (*Canis lupus*), grizzly bears (*Ursus arctos*), and black bears (*Ursus americanus*) (Seip 2008, p. 1). Increased predation from these natural predators, particularly wolves and cougars, is thought to be the most, or one of the most significant contributors to Southern Mountain Caribou DPS declines in recent decades (Seip 1992, p. 1500; Kinley and Apps 2001, p. 161; MCST 2005, p. 4, Wittmer *et al.* 2005b, pp. 414–415). Elevated levels of predation on caribou in the Southern Mountain Caribou DPS have likely been caused, in part, by an alteration of the natural predator-prey ecology within their range (Wittmer *et al.* 2005b, p. 417; Seip 2008, p. 3).

This change in the predator-prey ecology within the Southern Mountain Caribou DPS is thought to be catalyzed, at least in part, by human-caused habitat alteration and fragmentation (Seip 2008, p. 3). Habitat alteration and fragmentation within the Southern Mountain Caribou DPS is caused by many things including, but not limited to, forest harvest, fire, human development, and climate change (see Factor A discussion, above). Alteration and fragmentation from these and other activities disturb land and create edge habitats. These new edges and disturbances allow for the introduction of early seral habitat that is preferred by deer, elk, and moose, thereby increasing habitat suitability for these alternate ungulate prey species within the Southern Mountain Caribou DPS (Kinley and Apps 2001, p. 162; Seip 2008, p. 3). The increase in habitat suitability for deer, elk, and moose have allowed these alternate prey species to subsist in areas that, under natural disturbance regimes, would have been dominated by contiguous old-growth forest and of limited value to them (Kinley and Apps 2001, p. 162). The

result is an altered distribution and increased numbers of these alternative ungulate prey species, particularly within summer habitat of caribou within the Southern Mountain Caribou DPS (Kinley and Apps 2001, p. 162; Wittmer *et al.* 2005a, pp. 263–264). Many studies suggest that increases in alternative ungulate prey within caribou summer habitat have stimulated an associated increase of natural predators, particularly cougars and wolves, in these same areas, consequently disrupting the predator-prey ecology within the Southern Mountain Caribou DPS and resulting in increased predation on caribou (Kinley and Apps 2001, p. 162; Wittmer *et al.* 2005b, pp. 414–415).

The specific changes to predator/prey ecology are different across the Southern Mountain Caribou DPS. In the northern portion of the DPS, wolf and moose populations have increased. In the southern portion of the DPS, cougar, elk, and deer populations have increased. Because alternate ungulate prey are driving predator abundance in caribou habitat (Wittmer *et al.* 2005b, p. 414), predators may remain abundant in caribou habitat while caribou numbers remain few. This renders one of the caribou's main predator defenses—predator avoidance—relatively ineffective during certain parts of the year.

Alterations in the predator-prey ecology of the Southern Mountain Caribou DPS may also have been catalyzed, in part, by successful game animal management in the Southern Mountain Caribou DPS (Wittmer *et al.* 2005b, p. 415). This too could have helped to increase deer, elk, and moose populations within the Southern Mountain Caribou DPS and led to an increase in ungulate predators, thus impacting caribou.

Conservation Efforts To Reduce Disease or Predation

Disease

We are not aware of any conservation measures currently being implemented to reduce impacts to caribou from disease.

Predation

Increased predation is thought to be the current primary threat affecting caribou within the Southern Mountain Caribou DPS (Seip 1992, p. 1500; Kinley and Apps 2001, p. 161; MCST 2005, p. 4, Wittmer *et al.* 2005b, pp. 414–415). Leading thoughts on managing predation include the management of predator populations directly, or the management of alternate ungulate prey populations. The 2007 Mountain Caribou Recovery Implementation Plan (MCRIP), produced by the BCMOE, proposed both approaches be taken within the Canadian portion of the Southern Mountain Caribou DPS (MCRIPPB 2010, pp. 1, 12, and 13).

Direct management of predator populations within the Southern Mountain Caribou DPS to date has included investigations to determine the degree of overlap between wolves and caribou home ranges. This research will assist BCMOE with decisions about location and intensity of wolf management or removal (MCRIPPB 2010, p. 12). Currently, removal of wolves from within the Southern Mountain Caribou DPS has been authorized by BCMOE through hunting and trapping. To date, this program has been implemented only on a limited basis. Initial results suggest this management effort has been successful at reducing wolf densities, but the response by mountain caribou will take several more years to determine (MCRIPPB 2010, p. 12). Finally, a wolf sterilization project is underway in a portion of the Southern Mountain Caribou DPS. This project is a pilot project designed to determine the feasibility and effectiveness of wolf sterilization (MCRIPPB 2010, p. 12). Initial results of this work suggest that some local populations are showing a positive response to these sterilization efforts. However, this conclusion is based on a correlation between the two variables and cause-effect has not been demonstrated (Ritchie *et al.* 2012, p. 4). One ongoing study, in the South Purcells local population, is investigating wolf and cougar overlap with caribou home ranges (MCRIPPB 2012, p. 12).

Direct management of alternate ungulate prey populations within the Southern Mountain Caribou DPS, to date, has been limited. The BCMOE has reported two pilot moose-reduction programs within the Southern Mountain Caribou DPS to determine effectiveness of reducing wolf densities through the management of moose densities in caribou habitat (MCRIPPB 2010, p. 13). These pilot efforts have indicated that reducing moose densities may reduce wolf numbers (MCRIPPB 2011, p. 4).

The BCMOE established a Mountain Caribou Recovery Implementation Progress Board (Board) with the publication of the 2007 MCRIP. The Board was charged with oversight of the implementation of the MCRIP and monitoring its effectiveness. In the Board's 2010 annual report, they declared that the conservation measures listed above have all been relatively limited in scope and have failed to meet the expectations of the Board (MCRIPPB 2010, p. 4). The Board's annual reports since 2010 have been slightly more favorable in their assessment of the BCMOE's efforts for predator and alternate ungulate prey management. However, it is still apparent that much research and progress still needs to be completed. For example, it is noteworthy that most of the conservation measures listed above target the wolf-moose predator-prey relationship that is the primary driver of predator-prey dynamics in the northern portion of the Southern Mountain Caribou DPS. We were able to find only one record or report of conservation measures that had been implemented to address predation of caribou by cougars, which may be the most salient issue for the small and struggling local populations in the southern portion of the Southern Mountain Caribou DPS (Wittmer *et al.* 2005b, pp. 414–415). Given the controversial nature of predator and alternate ungulate prey control for caribou conservation (MCRIPPB 2010, p. 4; MCRIPPB 2012, p. 11), these conservation measures have been and may continue to be slow to develop and difficult to implement.

Efforts at reducing predation in the United States are more limited and are not specifically targeted at reducing effects to caribou. In Idaho, caribou are found within game management unit (GMU) 1, which provides recreational hunting opportunities for black bear, mountain lion, and wolves, and also provides a limited trapping season for wolves (IDFG 2012, entire). Within this GMU, between July 1, 2010 and June 30, 2011, 109 mountain lions (IDFG 2011a, p. 6) and 179 black bears (IDFG 2011b, p. 4) were harvested. More recently, from September 1, 2011, through March 31, 2012, 28 wolves were harvested (IDFG 2013, *in litt.*). Washington State provides a limited hunting season for both black bear and mountain lion within GMU 113 (the GMU found in Washington State, Washington Department of Fish and Wildlife (WDFW) 2012, pp. 60–63), and within the critical habitat designated for the southern Selkirk Mountains population of woodland caribou (November 28, 2012, 77 FR 71042), and 44 black bears and 1 mountain lion were harvested in GMU 113 in 2011 (WDFW 2013a, *in litt.;* WDFW 2013b, *in litt.*). However, wolf hunting or trapping is not allowed in Washington State. As mentioned above, the objectives for these predator hunting and trapping seasons are not to benefit the Southern Mountain Caribou DPS in the United States, and any response in

the caribou population is not monitored. As such, any potential effects on caribou survival and population stability from hunting seasons on predators in Idaho and Washington remains unknown.

Summary for Factor C

Predation, particularly from wolves and cougars, is thought to be the most, or one of the most, significant contributors to caribou population declines within the Southern Mountain Caribou DPS in recent decades. Increased predation of caribou within this DPS has likely been caused, in part, by an alteration of the natural predator-prey ecology of the area. This new predator-prey dynamic has been catalyzed by increases in populations of alternative ungulate prey species such as elk, deer, and moose within caribou habitat. Ecosystems that favor these alternate ungulate prey species also favor predators such as wolves and cougars. These changes have likely been catalyzed, in part, by human-caused habitat loss and fragmentation, which increases habitat favorable to alternative ungulate prey species, and consequently attracts increased numbers of predators. Although some conservation measures have been implemented to reduce impacts to local populations of caribou from predation, more efficient, intensive, and frequent action is still needed within the Southern Mountain Caribou DPS. We have evaluated the best available scientific and commercial data on disease or predation of the Southern Mountain Caribou DPS and have determined that this factor poses a widespread and serious threat to the continued existence of the Southern Mountain Caribou DPS.

D. The Inadequacy of Existing Regulatory Mechanisms

Under this factor, we examine whether existing regulatory mechanisms are inadequate to address the threats to the species discussed under the other factors. Section 4(b)(1)(A) of the Act requires that the Service take into account ''those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species . . .'' In relation to Factor D under the Act, we interpret this language to require the Service to consider relevant Federal, State, and Tribal laws, regulations, and other such mechanisms that may minimize any of the threats we describe in threat analyses under the other four factors or otherwise enhance conservation of the species. We give strongest weight to statutes and their implementing regulations and to management direction that stems from those laws and regulations. An example would be State governmental actions enforced under a State statute or constitution, or Federal action under statute.

Many different regulatory mechanisms and government conservation actions have been implemented in both the United States and British Columbia in an attempt to alleviate threats to caribou within the Southern Mountain Caribou DPS. Below, we list these existing regulatory mechanisms and consider whether they are inadequate to address the identified threats to the Southern Mountain Caribou DPS.

Federal

U.S. Fish and Wildlife Service

The southern Selkirk Mountains population of woodland caribou (which we now consider a local population within the Southern Mountain Caribou DPS) was listed as endangered under the Act on February 29, 1984 (49 FR 7390). Listing the southern Selkirk Mountains local population of woodland caribou provided a variety of protections, including the prohibition against take and the conservation mandates of section 7 for all Federal agencies. Since this listing action, Federal agencies have been required to ensure that any action they authorize, fund, or carry out will not jeopardize the continued existence of the southern Selkirk Mountains population of woodland caribou. On November 28, 2012, the Service designated critical habitat for this population of caribou in northeastern Washington and Idaho (77 FR 71042). This designation encompasses a total of 30,010 ac (12,145 ha), protecting this area by requiring Federal agencies to ensure that any action they authorize, fund, or carry out in this area is not likely to result in destruction or adverse modification of the designated habitat (77 FR 71042). By law, the Service has the authority to designate critical habitat only within the jurisdiction of the United States.

U.S. Forest Service

Much of the caribou habitat within the United States is managed by the USFS (289,000 ac (116,954 ha)), although a significant amount of State and private lands (approximately 79,000 ac (31,970 ha)) occur within caribou range as well (USFWS 1994, p. 21). Because of the endangered status of these caribou and the critical habitat designation, the USFS, the primary caribou habitat land manager in the United States, is required to consult on actions they carry out, authorize, or fund that may affect caribou or their habitat on their lands. Thus, woodland caribou are afforded protections under the Act from the potential effects of Federal agency activities. Land and resource management plans (LRMPs) for the IPNF and the CNF have been revised to incorporate management objectives and standards to address the threats identified in the 1984 final listing rule (49 FR 7390). These LRMP revisions are a result of section 7 consultation between the Service and USFS (USFWS 2001a, b, entire). Standards for caribou habitat management have been incorporated into the IPNF's 1987 and CNF's 1988 LRMP, respectively. These standards are meant to avoid the likelihood of jeopardizing the continued existence of the species, contribute to caribou conservation, and ensure consideration of the biological needs of the species during forest management planning and implementation actions (USFS 1987, pp. II–6, II–27, Appendix N; USFS 1988, pp. 4–10–17, 4–38, 4–42, 4–73–76, Appendix I).

The CNF's LRMP in Washington has been revised to incorporate special management objectives and standards to address potential threats to woodland caribou on the CNF. The CNF also manages winter recreation in areas of potential conflict between snowmobile use and caribou, specifically in its Newport/Sullivan Lake Ranger District (77 FR 71042, p. 71071). The IPNF, beginning in 1993, implemented site-specific closures to protect caribou on the IPNF. However, more comprehensive standards addressing how, when, and where, to impose such restrictions across the IPNF were limited (USFS 1987, entire). In December 2005, a U.S. district court granted a preliminary injunction prohibiting snowmobile trail grooming within the caribou recovery area on the IPNF during the winter of 2005 to 2006. The injunction was granted because the IPNF had not developed a winter recreation strategy addressing the effects of snowmobiling on caribou. In November 2006, the Court granted a modified injunction restricting snowmobiling and snowmobile trail grooming on portions of the IPNF within the southern Selkirk Mountains caribou recovery area. On February 14, 2007, the Court ordered a modification of the current injunction to add a protected caribou travel corridor connecting habitat in the U.S. portion of the southern Selkirk Mountains with habitat in British Columbia. This injunction is currently in effect and restricts snowmobiling on 239,588 ac (96,957 ha), involving 71 percent of the

existing woodland caribou recovery area. In its revised LRMP (USFS 2013, entire), the IPNF considered the court-ordered snowmobile closure to be the standard until a winter travel plan is approved. The Service will work closely with the IPNF on the future development of their winter recreation strategy, which will be subject to section 7 consultation with the Service. For additional information see ''Conservation Efforts to Reduce Habitat Destruction, Modification, or Curtailment of Its Range'' under ''Efforts in the United States.'' We will further evaluate existing USFS regulatory mechanisms in our final determination for this action.

States

Idaho Department of Fish and Game (IDFG)

The woodland caribou within Idaho are considered a Species of Greatest Conservation Need by IDFG (IDFG 2005, pp. 373–375). There are historical reports of the illegal harvest of caribou within the Southern Mountain Caribou DPS (Scott and Servheen 1985, p. 15; Seip and Cichowski 1996, p. 76). However, we do not have data that suggest illegal killing is affecting caribou numbers in any of the local populations within the Southern Mountain Caribou DPS, and we do not consider this to be a threat to the species that needs to be addressed by a regulatory mechanism.

Idaho Department of Lands

The Idaho Department of Lands (IDL) manages approximately 51,000 ac (20,639 ha) of Southern Mountain Caribou DPS habitat in the United States. These lands are managed primarily for timber harvest, an activity which has, currently and historically, the potential to significantly impact caribou and their habitat. The IDL contracted for a habitat assessment of their lands within the South Selkirk ecosystem (Kinley and Apps 2007, entire). The results of this assessment indicated that one of the largest blocks of high-priority caribou habitat in the United States is centered on IDL property and adjacent USFS lands. The report stated that IDL property contributes significantly to caribou habitat within the South Selkirk ecosystem. The IDL, with financial assistance from the Service, began working on a habitat conservation plan (HCP) several years ago to protect caribou and other listed species on their lands. However, development of this HCP has not moved forward beyond the initial stages. Recently, winter motorized use restrictions were loosened on some IDL endowment land in the Abandon Creek area north of Priest Lake. Under a revised winter access plan, these previously closed lands will remain open to winter motorized use unless there is a confirmed caribou sighting along the Selkirk Crest within 2.7 mi (4.3 km) of the previous closing (Seymour 2012, *in litt.*). Because their timber harvest plans currently do not incorporate considerations for caribou and because of the recent removal of snowmobile restrictions, management of IDL's lands is likely not alleviating or addressing the threat of habitat loss, habitat fragmentation, or disturbance from winter recreation to caribou.

Washington Department of Fish and Wildlife

The southern Selkirk Mountains population of woodland caribou was listed as endangered in the State of Washington in 1982 (WDFW 2011, p. 38). In addition, this population within Washington is considered a Species of Greatest Conservation Need by WDFW (WDFW 2005, p. 620). In addition to Federal penalties associated with convictions of illegally taking a caribou, a $12,000 criminal wildlife penalty is assessed by WDFW for illegally killing or possessing a caribou in Washington State (WDFW 2012, p. 73). We do not have data that suggest illegal killing is affecting caribou numbers in any of the local populations within the Southern Mountain Caribou DPS, and we do not consider this to be a threat to the species that needs to be addressed by a regulatory mechanism.

Canada

The Woodland Caribou Southern Mountain population, which includes the Southern Mountain Caribou DPS, is protected as threatened under Canada's Species at Risk Act (SARA) (Statues of Canada (S.C.) ch 29). SARA defines a ''threatened'' species as ''a wildlife species that is likely to become an endangered species if nothing is done to reverse the factors leading to its extirpation or extinction'' (S.C. chapter 29, section 2). It is illegal to kill, harm, harass, capture, or take an individual of a wildlife species that is listed as a threatened species (S.C. chapter 29, section 32). SARA also prohibits any person from damaging or destroying the residence of a listed species, or from destroying any part of its critical habitat (S.C. chapter 29, sections 33, 58). For species that are not aquatic species or migratory birds, however, SARA's prohibition on destruction of the residence applies only on Federal lands. Most lands occupied by the Woodland Caribou Southern Mountain population are not Federal; hence SARA does little to protect the population's habitat.

The Woodland Caribou Southern Mountain population was assigned the status S1 in 2003, by the Province of British Columbia, meaning it is considered critically imperiled there (BCMOE 2013, *in litt.*). The Province of British Columbia does not have endangered species legislation. This lack of legislation can limit the ability to enact meaningful measures for the protection of status species such as caribou, especially as it relates to their habitat (Festa-Bianchet *et al.* 2011, p. 423). The British Columbia's Ministry of Forests, Lands and Natural Resource Operations currently does not allow hunting of caribou within the area where the Southern Mountain population of caribou occurs. The Woodland Caribou Southern Mountain population and its habitat are also protected by the National Parks Act in numerous National Parks in Canada (Canada 2013, *in litt.*). Because of its threatened status, the British Columbian government has endorsed the MCRIP, which encompasses the Southern Mountain Caribou DPS in Canada (British Columbia Ministry of Agriculture and Lands (BCMAL) 2007, *in litt.*). For further information on caribou conservation efforts in Canada, see the sections ''Conservation Efforts to Reduce Habitat Destruction, Modification, or Curtailment of Its Range'' under ''Efforts in Canada'' and ''Conservation Efforts to Reduce Disease or Predation'' under ''Predation.''

Substantial progress has been made for certain MCRIP goals, such as protecting habitat through government actions regulation (GAR) orders in British Columbia. However, other goals such as reducing the effects from predation have seen less progress made. Additional work and time is still needed to implement all goals identified in the MCRIP to adequately reduce threats to the Southern Mountain population of caribou in Canada. We will evaluate this further in our final determination for this action.

Local Ordinances

Currently, we are unaware of any local regulatory mechanisms addressing caribou habitat management or protection within the United States or Canada.

Private

Currently, we are unaware of any regulatory mechanisms addressing caribou habitat management or

protection on private lands within the United States.

Summary for Factor D

In the United States, the southern Selkirk Mountains local population of woodland caribou of the Southern Mountain Caribou DPS has been listed as endangered since 1984, and critical habitat was designated in 2012. Listing the southern Selkirk Mountains local population of woodland caribou provided a variety of protections, including the prohibition against take and the conservation mandates of section 7 for all Federal agencies. Because of the endangered status of these caribou and the critical habitat designation, the USFS, the primary caribou habitat land manager in the United States, is required to consult on actions they carry out, authorize, or fund that may affect caribou or their habitat on their lands. Thus, woodland caribou are afforded protections under the Act from the potential effects of Federal agency activities. Because the Service has regulations that prohibit take of all threatened wildlife species (50 CFR 17.31(a)), unless modified by a special rule issued under section 4(d) of the Act (50 CFR 17.31(c)), the regulatory protections of the Act are largely the same for wildlife species listed as endangered and as threatened; thus, the protections provided by the Act would remain in place if the Southern Mountain Caribou DPS is reclassified as a threatened species.

While the IDL also manages a substantial portion of caribou habitat, they are not required to manage their land for caribou. Many of IDL's land management plans, particularly timber harvest plans, do not currently consider caribou and do not address the identified threats to woodland caribou. IDL does consider caribou in their winter access plan and has, in the past, closed snowmobile trails to prevent winter disturbance; however, some of these trail closures have been recently relaxed and will remain open to winter motorized use unless there is a confirmed caribou sighting. Because IDL's land management plans, including timber harvest and winter access, do not consider woodland caribou, we conclude that management of IDL's lands is likely not alleviating or addressing the threat of habitat loss, habitat fragmentation, or disturbance from winter recreation to caribou.

Hunting regulations at the National and State levels provide adequate protections regarding the legal take of caribou in the United States, and we do not have data that suggest illegal killing is affecting caribou numbers in any of the local populations within the Southern Mountain Caribou DPS, and we do not consider this as a threat to the species.

In Canada, the Southern Mountain Caribou DPS is protected at the national level under SARA, while British Columbia considers them to be critically imperiled. A recovery plan, the MCRIP, has been endorsed by British Columbia. While efforts have been made towards meeting the goals identified in that recovery plan, additional work and time are needed to meet all the goals. Presently, there is not a hunting season in Canada for caribou within the Southern Mountain Caribou DPS.

Caribou local populations continue to decline within the Southern Mountain DPS despite regulatory mechanisms being in place in the United States and Canada. Although U.S. Federal and State, and Canadian national and provincial, regulations are providing some protection for the caribou within the Southern Mountain Caribou DPS, the suite of regulations is unable to address and ameliorate threats to caribou such as predation and loss of habitat. Remedies to address threats such as control of predators are not logistically easy to implement and may be expensive to address. Currently, the regulatory mechanisms in the United States and Canada are not addressing the identified threats to the Southern Mountain Caribou DPS. We will further evaluate the existing regulatory mechanisms and their impact on ameliorating threats to caribou in our final determination for this action.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Avalanches and Stochastic Events

One natural source of mortality for caribou is avalanches (Seip and Cichowski 1996, p. 76). This has been a notable threat to caribou within the Revelstoke area of Canada, within the Southern Mountain Caribou DPS, where the terrain is particularly steep and rugged with very high snowfall (Seip and Cichowski 1996, p. 76). Although avalanches are generally a natural phenomenon, the threat of avalanches to caribou may be increasing because caribou may be displaced into steeper, more avalanche-prone terrain during the winter from snowmobile and other winter recreational activities (Simpson 1987, p. 1; Seip and Cichowski 1996, p. 79).

Threats of all stochastic events such as avalanches become more serious as local populations become isolated and population numbers decrease. This is the case in the southern extent of the Southern Mountain Caribou DPS. For example, a small population of fewer than 10 individuals in Banff National Park (just outside the Southern Mountain Caribou DPS) was extirpated in the spring of 2009 from a single avalanche event (Parks Canada 2013, *in litt.*).

Conservation Efforts To Reduce Other Natural or Manmade Factors Affecting Its Continued Existence

We are not aware of any conservation measures currently being implemented to reduce impacts to caribou from avalanches or other stochastic events.

Summary for Factor E

Caribou are susceptible to stochastic events such as avalanches due to small local population sizes and isolation of these local populations. Local populations are increasingly at risk from impacts of stochastic events as they become more isolated and their population numbers decline. The threat from avalanches is amplified further when caribou are displaced from their preferred habitat into steeper, more dangerous habitat as a consequence of human recreation. Therefore we have determined other natural or manmade factors affecting its continued existence pose a threat to the continued existence of the Southern Mountain Caribou DPS.

Cumulative Effects From Factors A Through E

As alluded to in the discussions above, many of the causes of caribou population declines are linked, often by the threat of habitat alteration. For example, predation is one of the most significant threats to caribou within the Southern Mountain Caribou DPS. Predation is directly linked, in part, to habitat alteration and the associated introduction of early seral habitat and the creation of roads within caribou habitat in the Southern Mountain Caribou DPS. Specifically, the introduction of early seral habitat and new forest roads has altered the predator/prey ecology of the Southern Mountain Caribou DPS by creating suitable habitat for alternate ungulate prey and accessibility for their predators, respectively, into caribou habitat. Human disturbance, another of the threats to caribou within the Southern Mountain Caribou DPS, is also linked to habitat alteration because of the increased accessibility of caribou habitat that new forest roads have provided. Habitat alteration, in turn, is directly tied to and caused by another, and possibly two other, threats listed above—human development and climate change. Specifically, human

development and the resources it requires, probably in concert with climate change, have altered caribou habitat within the Southern Mountain Caribou DPS. This alteration has occurred through forest harvest and the creation of new infrastructure. It is reasonable to expect that human development and the resources it demands will continue to alter and fragment caribou habitat in the future. This, in turn, will continue to promote altered predator/prey ecology and associated increases in caribou predation, and human disturbance in caribou habitat within the Southern Mountain Caribou DPS. The suite of all these related threats, combined with each other, have posed and continue to pose a significant threat to caribou within the Southern Mountain Caribou DPS.

Proposed Determination

The range of the Southern Mountain Caribou DPS has been reduced by approximately 40 percent over the last century. The current status and distribution of caribou within the DPS is limited to an estimated 1,657 individuals in 15 local populations. This represents a reduction in total population size of 33 percent since 1995, with some individual local populations experiencing reductions of more than 50 percent. As previously discussed in the Summary of Factors Affecting the Species, significant threats to the Southern Mountain Caribou DPS include: increased levels of predation due to changes in the predator/prey dynamics, increased accessibility of caribou habitat by humans, disturbance of caribou from use of roads and from recreational vehicles, and climate change. All these threats are linked with past and ongoing habitat alteration and are occurring throughout the entire range of the DPS. These threats are expected to continue in the foreseeable future.

Under the Act and our implementing regulations, a species may warrant listing if it is endangered or threatened throughout all or a significant portion of its range. The Act defines ''endangered species'' as any species that is ''in danger of extinction throughout all or a significant portion of its range,'' and ''threatened species'' as any species which is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The definition of ''species'' is also relevant to this discussion. The Act defines ''species'' as follows: ''The term 'species' includes any subspecies of fish or wildlife or plants, and any distinct population segment [DPS] of any species of vertebrate fish or wildlife which interbreeds when mature.'' Although the Service employs the concept of being on the brink of extinction in the wild as its general understanding of ''in danger of extinction'' (USFWS 2010, *in litt.*), it does not do so in a narrow or inflexible way. As implemented by the Service, to be currently on the brink of extinction in the wild does not necessarily mean that extinction is certain or inevitable. Ultimately, whether a species is currently on the brink of extinction in the wild (including the timing of the extinction event itself) depends on the life history and ecology of the species, the nature of the threats, and the species' response to those threats (USFWS 2010, *in litt.*).

We have carefully evaluated the best scientific and commercial data available regarding the past, present, and future threats to the Southern Mountain Caribou DPS. As described above, the Southern Mountain Caribou DPS still has a relatively widespread distribution that has suffered ongoing major reductions of its numbers, range, or both, as a result of factors that have not been abated. This decline has resulted in the shrinking in size and isolation of local populations that make up this DPS.

A species with a relatively widespread distribution that has experienced, and continues to undergo, major reductions in its numbers, range, or both as a result of factors that have not been abated can be listed as either endangered or threatened. For the reasons outlined below, we have determined that the Southern Mountain Caribou DPS meets the definition of threatened throughout its entire range, and acknowledge that many of the smaller local populations may individually fit the definition of endangered. Specifically, we conclude that the Southern Mountain Caribou DPS meets the definition of threatened because, although all local populations within this DPS have suffered declines in numbers, range, or both, and have become increasingly isolated, populations in the northern portion of the DPS have suffered these declines to a lesser extent than those in the southern part of the range. Because of their relatively higher population numbers, these northern local populations have more resiliency to threats than local populations in the southern extent of the DPS. For this reason, when assessed across its range, we conclude that the Southern Mountain Caribou DPS as a whole is not endangered, because we expect the northern populations to persist, at least for the foreseeable future. As discussed below, we have determined that caribou within the ''endangered'' southern local populations do not constitute a significant portion of the species' range, according to the Service's current policy. In other words, we have determined that the loss of the ''endangered'' local populations would not substantially increase the vulnerability of the ''threatened'' local populations, such that the entire DPS would be in danger of extinction (i.e., would become endangered). Therefore, on the basis of the best scientific and commercial data available and per our policy, we propose to amend the current listing of the woodland caribou (southern Selkirk Mountains population) as an endangered species, as identified at 50 CFR 17.11(h), to reflect the Southern Mountain Caribou DPS as a threatened species in accordance with sections 3(20) and 4(a)(1) of the Act.

Significant Portion of the Range

Under the Act and our implementing regulations, a species may warrant listing if it is an endangered or threatened species throughout all or a significant portion of its range. The Act defines ''endangered species'' as any species which is ''in danger of extinction throughout all or a significant portion of its range,'' and ''threatened species'' as any species which is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The definition of ''species'' is also relevant to this discussion. The Act defines ''species'' as follows: ''The term 'species' includes any subspecies of fish or wildlife or plants, and any distinct population segment [DPS] of any species of vertebrate fish or wildlife which interbreeds when mature.'' The phrase ''significant portion of its range'' (SPR) is not defined by the statute. Additionally, we have never addressed in our regulations: (1) The consequences of a determination that a species is either endangered or likely to become so throughout a significant portion of its range, but not throughout all of its range; or (2) what qualifies a portion of a range as ''significant.''

Two recent district court decisions have addressed whether the SPR language allows the Service to list or protect less than all members of a defined ''species'': *Defenders of Wildlife* v. *Salazar,* 729 F. Supp. 2d 1207 (D. Mont. 2010), concerning the Service's delisting of the Northern Rocky Mountain gray wolf (74 FR 15123, April 2, 2009); and *WildEarth Guardians* v.

Salazar, 2010 U.S. Dist. LEXIS 105253 (D. Ariz. September 30, 2010), concerning the Service's 2008 finding on a petition to list the Gunnison's prairie dog (73 FR 6660, February 5, 2008). The Service had asserted in both of these determinations that it had authority, in effect, to protect only some members of a ''species,'' as defined by the Act (i.e., species, subspecies, or DPS), under the Act. Both courts ruled that the determinations were arbitrary and capricious on the grounds that this approach violated the plain and unambiguous language of the Act. The courts concluded that reading the SPR language to allow protecting only a portion of a species' range is inconsistent with the Act's definition of ''species.'' The courts concluded that once a determination is made that a species (i.e., species, subspecies, or DPS) meets the definition of ''endangered species'' or ''threatened species,'' it must be placed on the list in its entirety and the Act's protections applied consistently to all members of that species (subject to modification of protections through special rules under sections 4(d) and 10(j) of the Act).

Consistent with that interpretation, and for the purposes of this finding, we interpret the phrase ''significant portion of its range'' in the Act's definitions of ''endangered species'' and ''threatened species'' to provide an independent basis for listing; thus there are two situations (or factual bases) under which a species would qualify for listing: a species may be endangered or threatened throughout all of its range; or a species may be endangered or threatened in only a significant portion of its range. If a species is in danger of extinction throughout a significant portion of its range, the species is an ''endangered species.'' The same analysis applies to ''threatened species.'' Based on this interpretation and supported by existing case law, the consequence of finding that a species is endangered or threatened in only a significant portion of its range is that the entire species shall be listed as endangered or threatened, respectively, and the Act's protections shall be applied across the species' entire range.

We conclude, for the purposes of this finding, that interpreting the significant portion of its range phrase as providing an independent basis for listing is the best interpretation of the Act. It is consistent with the purposes and the plain meaning of the key definitions of the Act; it does not conflict with established past agency practice (i.e., prior to the 2007 Solicitor's Opinion), as no consistent, long-term agency practice has been established; and it is consistent with the judicial opinions that have most closely examined this issue. Having concluded that the phrase ''significant portion of its range'' provides an independent basis for listing and protecting the entire species, we next turn to the meaning of ''significant'' to determine the threshold for when such an independent basis for listing exists.

Although there are potentially many ways to determine whether a portion of a species' range is ''significant,'' we conclude, for the purposes of this finding, that the significance of the portion of the range should be determined based on its biological contribution to the conservation of the species. For this reason, we describe the threshold for ''significant'' in terms of an increase in the risk of extinction for the species. We conclude that a biologically based definition of ''significant'' best conforms to the purposes of the Act, is consistent with judicial interpretations, and best ensures species' conservation. Thus, for the purposes of this finding, and as explained further below, a portion of the range of a species is ''significant'' if its contribution to the viability of the species is so important that without that portion, the species would be in danger of extinction.

We evaluate biological significance based on the principles of conservation biology using the concepts of redundancy, resiliency, and representation. *Resiliency* describes the characteristics of a species and its habitat that allow it to recover from periodic disturbance. *Redundancy* (having multiple populations distributed across the landscape) may be needed to provide a margin of safety for the species to withstand catastrophic events. *Representation* (the range of variation found in a species) ensures that the species' adaptive capabilities are conserved. Redundancy, resiliency, and representation are not independent of each other, and some characteristic of a species or area may contribute to all three. For example, distribution across a wide variety of habitat types is an indicator of representation, but it may also indicate a broad geographic distribution contributing to redundancy (decreasing the chance that any one event affects the entire species), and the likelihood that some habitat types are less susceptible to certain threats, contributing to resiliency (the ability of the species to recover from disturbance). None of these concepts is intended to be mutually exclusive, and a portion of a species' range may be determined to be ''significant'' due to its contributions under any one or more of these concepts.

For the purposes of this finding, we determine if the biological contribution of a portion of a species' range qualifies that portion as ''significant'' by asking whether without that portion, the representation, redundancy, or resiliency of the species would be so impaired that the species would have an increased vulnerability to threats to the point that the overall species would be in danger of extinction (i.e., would be ''endangered''). Conversely, we would not consider the portion of the range at issue to be ''significant'' if there is sufficient resiliency, redundancy, and representation elsewhere in the species' range that the species would not be in danger of extinction throughout its range if the population in that portion of the range in question became extirpated (extinct locally).

We recognize that this definition of ''significant'' (a portion of the range of a species is ''significant'' if its contribution to the viability of the species is so important that without that portion, the species would be in danger of extinction) establishes a threshold that is relatively high. On the one hand, given that the consequences of finding a species to be endangered or threatened in a significant portion of its range would be listing the species throughout its entire range, it is important to use a threshold for ''significant'' that is robust. It would not be meaningful or appropriate to establish a very low threshold whereby a portion of the range can be considered ''significant'' even if only a negligible increase in extinction risk would result from its loss. Because nearly any portion of a species' range can be said to contribute some increment to a species' viability, use of such a low threshold would require us to impose restrictions and expend conservation resources disproportionately to conservation benefit: listing would be rangewide, even if only a portion of the range of minor conservation importance to the species is imperiled. On the other hand, it would be inappropriate to establish a threshold for ''significant'' that is too high. This would be the case if the standard were, for example, that a portion of the range can be considered ''significant'' only if threats in that portion result in the entire species' being currently endangered or threatened. Such a high bar would not give the significant portion of its range phrase independent meaning, as the Ninth Circuit held in *Defenders of Wildlife* v. *Norton,* 258 F.3d 1136 (9th Cir. 2001).

The definition of ''significant'' used in this finding carefully balances these concerns. By setting a relatively high threshold, we minimize the degree to which restrictions will be imposed or resources expended that do not contribute substantially to species conservation. But we have not set the threshold so high that the phrase ''in a significant portion of its range'' loses independent meaning. Specifically, we have not set the threshold as high as it was under the interpretation presented by the Service in the *Defenders* litigation. Under that interpretation, the portion of a species' range would have to be so important to the species that the current threats to that portion of the range are such that the entire species would be currently threatened or endangered everywhere. (We recognize that if the species is threatened or endangered in a portion that rises to that level of biological significance, then we should conclude that the species is in fact endangered or threatened throughout all of its range, and that we would not need to rely on the significant portion of its range language for such a listing.) Under the definition of ''significant'' used in this finding, however, to be considered significant, a portion of the range need not rise to such an exceptionally high level of biological significance. Rather, under this interpretation we ask whether the species would be endangered everywhere without that portion (*i.e.,* if that portion were to be completely extirpated). In other words, for any portion of the range to be considered significant by our proposed policy, the complete extirpation (in a hypothetical future) of the species in that portion of the range would need to cause the species in the remainder of the range to be endangered. If the hypothetical extirpation of the species in that portion of the range would not cause the species in the remainder of the range to meet the definition of endangered, that portion is not considered significant.

The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose to analyzing portions of the range that have no reasonable potential to be significant or to analyzing portions of the range in which there is no reasonable potential for the species to be endangered or threatened. To identify only those portions that warrant further consideration, we determine whether there is substantial information indicating that: (1) The portions may be ''significant,'' *and* (2) the species may be in danger of extinction there or likely to become so within the foreseeable future. Depending on the biology of the species, its range, and the threats it faces, it might be more efficient for us to address the significance question first or the status question first. Thus, if we determine that a portion of the range is not ''significant,'' we do not need to determine whether the species is endangered or threatened there; if we determine that the species is not endangered or threatened in a portion of its range, we do not need to determine if that portion is ''significant.'' In practice, a key part of the determination that a species is in danger of extinction in a significant portion of its range is whether the threats are geographically concentrated in some way. If the threats to the species are essentially uniform throughout its range, no portion is likely to warrant further consideration. Moreover, if any concentration of threats to the species occurs only in portions of the species' range that clearly would not meet the biologically based definition of ''significant,'' such portions will not warrant further consideration.

Having determined that the Southern Mountain Caribou DPS is threatened throughout its range, we must next consider whether there are any significant portions of the range where the species is in danger of extinction (i.e., are endangered). We therefore evaluated the current range of the Southern Mountain Caribou DPS to determine if there is any apparent geographic concentration of potential threats for this species. We considered the potential direct and indirect threats due to habitat alteration, including forest harvest, forest fires, insect outbreaks, human development, human recreation, and climate change, as well as predation. We found the severity of threats to the DPS to be relatively consistent across its entire range, although habitat alteration has been more pronounced to date in the southern extent of the DPS. Further, although there are several small, local populations that occur on the periphery in the northern extent of the DPS (e.g., Narrow Lake and Barkerville), local populations are generally smaller in numbers and further separated by distance in the southern portion of the DPS. In his paper assessing the status of the Mountain Caribou Ecotype, Hatter *et al.* (2004, p. 10) predicted a loss of some of these smaller populations (ranging from four to seven populations depending on the modeling scenario used) in 20 years. Therefore, these smaller local populations may lack resiliency and redundancy to threats.

We have determined that many local populations within the Southern Mountain Caribou DPS are at risk of extirpation and that these individual local populations meet the definition of endangered under the Act. Given this, we must determine if those ''endangered'' local populations collectively make up a significant portion of the range of the species. To determine this we asked the question: In the absence of the ''endangered'' populations, is the representation, redundancy, or resilience of the remaining local populations impaired to the extent that the remainder of the DPS would be endangered? Because the local populations of the Southern Mountain Caribou DPS are largely geographically and behaviorally isolated from each other, it follows that the impacts to one local population should not greatly influence the impacts to another. Therefore, the future extirpation of the ''endangered'' local populations would not be anticipated to change the status of the remaining local populations within the DPS. Six of the local populations have current population estimates of 100 individuals or more, and 3 of those have greater than 200 individuals (Ritchie 2013, *in litt.*). Even if several of the small local populations within the Southern Mountain Caribou DPS were to be extirpated within the foreseeable future, we have no information to suggest that this loss, while by no means a desirable conservation outcome, would result in the endangerment of the remaining local populations comprising the DPS. In other words, the loss of some of the smaller, relatively isolated local populations within the DPS would not be anticipated to lead to the impending extinction of the larger local populations in the northern portion of the DPS. Considering the above, we determine that some local populations of the Southern Mountain Caribou DPS are in danger of extirpation over a portion of its range; however, this portion does not meet the standards to be considered a significant portion of the range. Therefore, our determination is that the Southern Mountain Caribou DPS is not endangered in a significant portion of its range, and should be listed as threatened throughout its range.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through the listing results in public awareness and conservation

by Federal, State, Tribal, and local agencies; private organizations; and individuals. The Act encourages cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act requires the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

A Selkirk Mountain Caribou Management Plan/Recovery Plan was approved by the Service in 1985 (USFWS 1985), and a revised Recovery Plan for Woodland Caribou in the Selkirk Mountains was approved by the Service in 1994 (USFWS 1994). An update regarding the status of this recovery plan can be found in the latest 5-year status review for the species (*see* USFWS 2008, entire; see *http://www.fws.gov/idaho/Caribou/Tab5References/USFWS_2008a.pdf*). While actions have been carried out in an attempt to recover this local population, the recovery criteria in the 1994 recovery plan were determined to be inadequate (USFWS 2008, p. 15). In addition, this recovery plan only applies to this one local population, and does not extend to the entire proposed Southern Mountain Caribou DPS. If we finalize this proposal as currently written, revisions to the plan, in coordination with British Columbia, Canada, will be required to address the entire DPS and the continuing or new threats to the subspecies. A new recovery plan for this DPS would identify site-specific management actions that set a trigger for review of the five factors that determine whether the listed entity remains endangered or threatened or may be downlisted or delisted, and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. A recovery team comprised of species experts from Canada, Tribes, and the United States would be assembled to revise or develop a recovery plan for the Southern Mountain Caribou DPS. When completed, the draft recovery plan and the final recovery plan will be available on our Web site (*http://www.fws.gov/endangered*), or from our Idaho Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions may include habitat restoration (e.g., restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

If this proposed rule becomes final, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the States of Idaho and Washington would be eligible for Federal funds to implement management actions that promote the protection or recovery of the Southern Mountain Caribou DPS. Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants.*

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal agency actions within the species habitat that may require conference or consultation or both as described in the preceding paragraph include but may not be limited to: Management and any other landscape-altering activities on Federal lands administered by the USFS and Bureau of Land Management, issuance of section 404 Clean Water Act permits by the U.S. Army Corps of Engineers, construction and management of gas pipeline and power line rights-of-way by the Federal Energy Regulatory Commission, and construction and maintenance of roads or highways by the Federal Highway Administration.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. The prohibitions of section 9(a)(2) of the Act, codified at 50 CFR 17.21 for endangered wildlife, in part, make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import, export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. Under the Lacey Act (18 U.S.C 42–43; 16 U.S.C. 3371–3378), it is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 for endangered species, and at 17.32 for threatened species. With regard to endangered wildlife, a permit must be issued for the following purposes: for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within

the range of species proposed for listing. The following activities could potentially result in a violation of section 9 of the Act; this list is not comprehensive:

(1) Introduction of nonnative species that compete with or prey upon individuals of the Southern Mountain Caribou DPS; and

(2) Unauthorized modification of the old-growth, coniferous forest landscape within the Southern Mountain Caribou DPS.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Idaho Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). Requests for copies of the regulations concerning listed animals and general inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 911 NE 11th Avenue, Portland, OR 97232–4181 (telephone 503–231–6131; facsimile 503–231–6243).

Critical Habitat

Under the Act, any species that is determined to be an endangered or threatened species requires critical habitat to be designated, to the maximum extent prudent and determinable. Designations and revisions of critical habitat can only be completed through rulemaking. Because we have determined that the designation of critical habitat will not likely increase the degree of threat to the subspecies and may provide some measure of benefit, we find that designation of critical habitat is prudent for the Southern Mountain Caribou DPS. We reviewed the available information pertaining to the biological and habitat needs of the Southern Mountain Caribou DPS. This and other information represent the best scientific data available and led us to conclude that the designation of critical habitat is determinable for the Southern Mountain Caribou DPS. Based on our evaluation of the best available data, and analysis of the conservation needs of the species, we have determined that critical habitat is prudent and determinable for the proposed Southern Mountain Caribou DPS.

However, our regulations at 50 CFR 424.12(h) state that critical habitat shall not be designated within foreign countries or in other areas outside of United States jurisdiction; therefore, any designation of critical habitat for the Southern Mountain Caribou DPS must be limited to that portion of the DPS that occurs within the boundaries of the United States. Of the 15 local populations comprising the Southern Mountain Caribou DPS, the southern Selkirk Mountains woodland caribou population is the only population that moves freely between the coterminous United States and Canada.

The Act defines critical habitat as the specific areas occupied by the species at the time it is listed, on which are found those physical or biological features essential to the conservation of the species, which may require special management considerations or protection. On November 28, 2012 (77 FR 71042), we published a final rule designating critical habitat for the southern Selkirk Mountains population of woodland caribou, the only local population of the Southern Mountain Caribou DPS that moves southward across the border into the United States. In that final rule, we determined that the majority of habitat essential to the conservation of this population occurred in British Columbia, Canada, although the U.S. portion of the habitat used by the caribou makes an essential contribution to the conservation of the species. We designated as critical habitat approximately 30,010 ac (12,145 ha) within Boundary County, Idaho, and Pend Oreille County, Washington, that we considered to be occupied at the time of listing and that provided the physical or biological features essential to the conservation of the species, which may require special management considerations or protection.

The proposed amendment of the currently listed population of the woodland caribou expands the geographical area occupied by the caribou northward across the international border; therefore, all of the new area lies in Canada. Since we can only designate critical habitat within the United States, we must identify those specific areas within the United States that we consider to have been occupied at the time of listing, and that provide the physical or biological features essential to the conservation of the Southern Mountain Caribou DPS. However, as the physical or biological features essential to the conservation of the Southern Mountain Caribou DPS are no different than those essential to the conservation of the currently listed southern Selkirk Mountains population of woodland caribou, and the geographical area in the United States occupied by this transboundary population of woodland caribou at the time of listing remains unchanged, the resulting area corresponds exactly to the critical habitat identified for the southern Selkirk Mountains population of woodland caribou in our final rule published on November 28, 2012 (77 FR 71042). As a result, we have determined that the specific area identified in the previous final critical habitat (77 FR 71042) meets the definition of critical habitat for this DPS, and we have determined that there are no additional areas that meet the definition of critical habitat and should be included. Therefore, we propose to reaffirm the designation of approximately 30,010 ac (12,145 ha) in one unit within Boundary County, Idaho, and Pend Oreille County, Washington, as critical habitat for the Southern Mountain Caribou DPS, should the proposed amendment to the listed entity become final.

In addition, we propose to change the heading and text of the critical habitat entry, as well as the title of the critical habitat map, published in the Code of Federal Regulations (CFR) at 50 CFR 17.95(a) to reflect the correct entity, the Southern Mountain Caribou DPS (see the Proposed Regulation Promulgation section of this document). For further information on the essential physical or biological features for the caribou and our criteria used to develop critical habitat, refer to our November 28, 2012 (77 FR 71042) final rule designating critical habitat for the southern Selkirk Mountains population of woodland caribou.

We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to insure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) the prohibitions of section 9 of the Act if actions occurring in these areas may affect the species. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future

recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our listing determination for this species is based on scientifically sound data, assumptions, and analyses. We will invite these peer reviewers to comment during the public comment period.

We will consider all comments and information received during the comment period on this proposed rule during preparation of a final rule. Accordingly, the final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearing on this proposal, if requested. Requests must be received within 45 days after the date of publication of this proposal in the **Federal Register**. Such requests must be sent to the address shown in the **FOR FURTHER INFORMATION CONTACT** section. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Persons needing reasonable accommodations to attend and participate in a public hearing should contact the Idaho Fish and Wildlife Office at 208–378–5243, as soon as possible. To allow sufficient time to process requests, please call no later than 1 week before the hearing date. Information regarding this proposed rule is available in alternative formats upon request.

Effects of This Rule

This proposal, if made final, would revise 50 CFR 17.11(h) to amend the current listing of the transboundary southern Selkirk Mountains population of woodland caribou by defining the Southern Mountain Caribou DPS, which includes the currently listed endangered southern Selkirk Mountains population of woodland caribou, and designate the status of the Southern Mountain Caribou DPS as threatened under the Act. This rule formally recognizes that the proposed Southern Mountain Caribou DPS is not in imminent danger of extinction throughout all or a significant portion of its range. However, this proposed designation of threatened status for the newly defined DPS would not significantly change the protection afforded the currently listed local population of the southern Selkirk Mountains population of woodland caribou under the Act. The regulatory protections of section 9 and section 7 of the Act are largely the same for species listed as endangered or threatened. Anyone taking, attempting to take, or otherwise possessing a Southern Mountain Caribou or parts thereof, in violation of section 9 of the Act, is still subject to a penalty under section 11 of the Act, unless their action is covered under a special rule under section 4(d) of the Act. At this time, we are not proposing a special rule under section 4(d) of the Act for the Southern Mountain Caribou DPS. Under section 7 of the Act, Federal agencies must ensure that any actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of the Southern Mountain Caribou DPS.

This proposal, if made final, would also revise 50 CFR 17.95(a) by reaffirming the designation of approximately 30,010 ac (12,145 ha) as critical habitat for the southern Selkirk Mountains population of woodland caribou as applicable to the U.S. portion of the proposed Southern Mountain Caribou DPS.

Required Determinations

Clarity of This Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use common, everyday words and clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section, above. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501, et seq.)

This rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with listing a species as an endangered or threatened species under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited in this rule is available on the Internet at *http://www.regulations.gov* or upon request from the State Supervisor, Idaho Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the Idaho Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; 4201–4245, unless otherwise noted.

■ 2. In § 17.11(h), remove the entry for ''Caribou, woodland'' and add an entry for ''Caribou, Southern Mountain'' in alphabetical order under MAMMALS in

the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*	*	
Caribou, Southern Mountain.	*Rangifer tarandus caribou*.	U.S.A. ..... (AK, ID, ME, MI, MN, MT, NH, VT, WA, WI), Canada..	U.S.A. (wherever occurring), Canada (southeastern British Columbia).	T	128E, 136, 143	17.95(a)	NA
*	*	*	*	*	*	*	

■ 3. In § 17.95(a), amend the entry for ''Woodland caribou (*Rangifer tarandus caribou*) Southern Selkirk Mountain Population'' as follows:

■ a. By revising the heading;

■ b. By revising the introductory text of paragraph (a)(2);

■ c. By revising paragraph (a)(2)(iv); and

■ d. By revising paragraph (a)(5).

These revisions read as follows:

§ 17.95 Critical habitat—fish and wildlife.

(a) *Mammals.*

* * * * *

Woodland Caribou (*Rangifer tarandus caribou*) Southern Mountain Caribou Distinct Population Segment (DPS)

* * * * *

(2) Within this area, the primary constituent elements of the physical and biological features essential to the conservation of the Southern Mountain Caribou DPS consist of five components:

* * *

* * * * *

(iv) High-elevation benches and shallow slopes, secondary stream bottoms, riparian areas, seeps, and subalpine meadows with succulent forbs and grasses, flowering plants, horsetails, willow, huckleberry, dwarf birch, sedges, and lichens. The Southern Mountain Caribou DPS, including pregnant females, uses these areas for feeding during the spring and summer seasons.

* * * * *

(5) Unit 1: Boundary County, Idaho, and Pend Oreille County, Washington. The map of the critical habitat unit follows:

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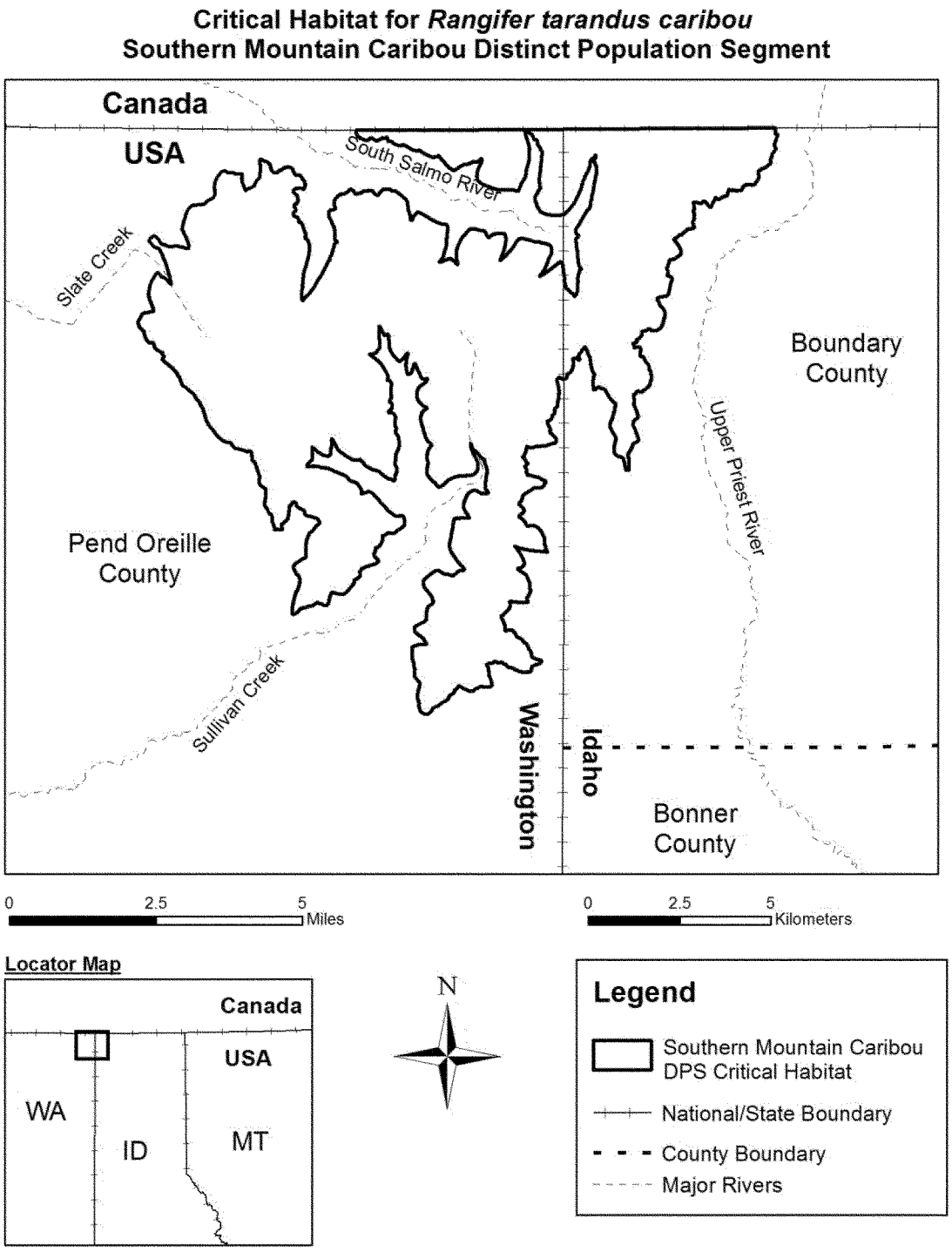

* * * * *

Dated: April 7, 2014.

Daniel M. Ashe,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2014–09601 Filed 5–7–14; 8:45 am]

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Part III

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 405 and 418
Medicare Program; FY 2015 Hospice Wage Index and Payment Rate Update; Hospice Quality Reporting Requirements and Process and Appeals for Part D Payment for Drugs for Beneficiaries Enrolled in Hospice; Proposed Rule

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 405 and 418

[CMS–1609–P]

RIN 0938–AS10

Medicare Program; FY 2015 Hospice Wage Index and Payment Rate Update; Hospice Quality Reporting Requirements and Process and Appeals for Part D Payment for Drugs for Beneficiaries Enrolled in Hospice

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would update the hospice payment rates and the wage index for fiscal year (FY) 2015 and continue the phase out of the wage index budget neutrality adjustment factor (BNAF). This rule provides an update on hospice payment reform analyses and solicits comments on ''terminal illness'' and ''related conditions'' definitions, and on a process and appeals for Part D payment for drugs, while beneficiaries are under a hospice election. Also, this rule proposes timeframes for filing the notice of election and the notice of termination/revocation; adding the attending physician to the hospice election form; a requirement that hospices complete their hospice inpatient and aggregate cap determinations within 5 months after the cap year ends, and remit any overpayments; and updates for the hospice quality reporting program.

In addition, this rule would provide guidance on determining hospice eligibility, information on the delay in the implementation of the International Classification of Diseases, 10th Revision, Clinical Modification (ICD–10–CM), and would further clarify how hospices are to report diagnoses on hospice claims. Finally, the rule proposes to make a technical regulatory text change.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on July 1, 2014.

ADDRESSES: In commenting, please refer to file code CMS–1609–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1609–P, P.O. Box 8010, Baltimore, MD 21244–8010.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1609–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written comments ONLY to the following addresses prior to the close of the comment period:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

Comments erroneously mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Debra Dean-Whittaker, (410) 786–0848 for questions regarding the CAHPS® Hospice Survey. Robin Dowell, (410) 786–0060 for questions regarding the hospice quality reporting program. Deborah Larwood, (410) 786–9500 for questions regarding process and appeals for Part D payment for drugs while beneficiaries are under a hospice election. Owen Osaghae, (410) 786–7550 for questions regarding the hospice inpatient and aggregate cap determinations.

For general questions about hospice payment policy please send your inquiry via email to: *hospicepolicy@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION: Wage index addenda will be available only through the internet on the CMS Web site at: (*http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/Hospice/index.html.*) Readers who experience any problems accessing any of the wage index addenda related to the hospice payment rules that are posted on the CMS Web site identified above should contact Hillary Loeffler at 410–786–0456.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

Table of Contents

Acronyms

Because of the many terms to which we refer by acronym in this proposed rule, we are listing the acronyms used and their corresponding meanings in alphabetical order below:

ACA Affordable Care Act
APU Annual Payment Update
BBA Balanced Budget Act of 1997
BIPA Benefits Improvement and Protection Act of 2000
BNAF Budget Neutrality Adjustment Factor
BLS Bureau of Labor Statistics
CAHPS® Consumer Assessment of Healthcare Providers and Systems
CBSA Core-Based Statistical Area
CCW Chronic Conditions Data Warehouse
CFR Code of Federal Regulations
CHC Continuous Home Care
CMS Centers for Medicare & Medicaid Services
COPD Chronic Obstructive Pulmonary Disease
CoPs Conditions of Participation
CR Change Request
CVA Cerebral Vascular Accident
CWF Common Working File
CY Calendar Year
DDE Direct Data Entry
DME Durable Medical Equipment
DRG Diagnostic Related Group
DTRR Daily Transaction Reply Report
ER Emergency Room
FEHC Family Evaluation of Hospice Care
FR Federal Register
FY Fiscal Year
GAO Government Accountability Office
GIP General Inpatient Care
HCFA Healthcare Financing Administration
HHS Health and Human Services
HIPPA Health Insurance Portability and Accountability Act
HIS Hospice Item Set
HQRP Hospice Quality Reporting Program
IACS Individuals Authorized Access to CMS Computer Services
ICD–9–CM International Classification of Diseases, Ninth Revision, Clinical Modification
ICD–10–CM International Classification of Diseases, Tenth Revision, Clinical Modification
ICR Information Collection Requirement
IDG Interdisciplinary Group
IPPS Inpatient Prospective Payment System
IRC Inpatient Respite Care
LCD Local Coverage Determination
MAC Medicare Administrative Contractor
MAP Measure Applications Partnership
MedPAC Medicare Payment Advisory Commission
MFP Multi-Factor Productivity
MSA Metropolitan Statistical Area
NCPDP National Council for Prescription Drug Programs
NHPCO National Hospice and Palliative Care Organization
NF Long Term Care Nursing Facility
NOE Notice of Election
NOTR Notice of Termination/Revocation
NP Nurse Practitioner
NPI National Provider Identifier
NQF National Quality Forum
OIG Office of the Inspector General
OACT Office of the Actuary
OIG Office of Inspector General
OMB Office of Management and Budget
ONC Office of the National Coordinator for Health Information Technology
PA Prior Authorization
PBM Pharmacy Benefit Manager
PDE Prescription Drug Event
PRA Paperwork Reduction Act
PRRB Provider Reimbursement Review Board
PS&R Provider Statistical and Reimbursement Report
Pub. L. Public Law
QAPI Quality Assessment and Performance Improvement
QIO Quality Improvement Organization
QRP Quality Reporting Program
RFA Regulatory Flexibility Act
RHC Routine Home Care
SAF Standard Analytic File
SBA Small Business Administration
SNF Skilled Nursing Facility

TEFRA Tax Equity and Fiscal Responsibility Act of 1982
TEP Technical Expert Panel
TrOOP True Out-of-Pocket
U.S.C. United States Code

I. Executive Summary for This Proposed Rule

A. Purpose

This rule proposes updates to the payment rates for hospices for fiscal year (FY) 2015 as required under section 1814(i) of the Social Security Act (the Act). The proposed updates incorporate the use of updated hospital wage index data, the 6th year of the 7-year Budget Neutrality Adjustment Factor (BNAF) phase-out, and an update to the hospice payment rates by the hospice payment update percentage. In addition, section 3004(c) of the Patient Protection and Affordable Care Act (Pub. L. 111–148) as amended by the Health Care and Education Reconciliation Act (Pub. L. 111–152) (the Affordable Care Act) established a quality reporting program for hospices. Starting in FY 2014, hospices that failed to meet quality reporting requirements received a two percentage point reduction to their market basket update. The Affordable Care Act also requires the Secretary to implement revisions to the hospice payment methodology no earlier than October 1, 2013. As such, this proposed rule provides an update of our hospice payment reform activities. This rule solicits comments on: Definitions of ''terminal illness'' and ''related conditions''; and process and appeals for Part D payment for drugs while beneficiaries are under a hospice election. This rule proposes timeframes for filing the hospice notice of election and the notice of termination/revocation; adding the attending physician to the hospice election form; expediting hospice inpatient and aggregate cap determinations; and updates to the hospice quality reporting program. Additionally, this proposed rule provides guidance on determining a patient's eligibility for hospice, discusses the delay in the implementation of the International Classification of Diseases, 10th Revision, Clinical Modification (ICD–10–CM), clarifies how hospices would report diagnoses, in accordance with current ICD–9–CM guidelines, on hospice claims, and proposes a technical regulations text change.

B. Summary of the Major Provisions

In this rule we propose to update the hospice payment rates for FY 2015 by 1.3 percent as described in section III.G.3. The hospice wage index would be updated with more current wage data and the BNAF would be reduced by an additional 15 percent for a total BNAF reduction of 85 percent as described in section III.G.2. The total BNAF phase-out would be complete by FY 2016. In 2010, the Congress amended section 1814(i)(6) of the Act with section 3132(a) of the Affordable Care Act. The amendment authorized the Secretary to collect additional data and information determined appropriate to revise payments for hospice care (no earlier than October 1, 2013) and for other purposes. An initial step of hospice payment reform in this proposed rule is to clarify and enforce hospice payment policy, when necessary, in order to safeguard beneficiaries and the Medicare hospice benefit. In section III.A, we provide information on hospice behavior and trends that raise program integrity concerns; the impact of beneficiary access to quality end of life care; and the effect of hospice providers' market driven goals rather than preserving the intent of the Medicare Hospice benefit. In response to the concerning trends and comments received in response to prior rulemaking, we are soliciting comments on definitions of ''terminal illness'' and ''related conditions'' in section III.B, in order to strengthen and clarify the current concepts of holistic and comprehensive hospice care under the Medicare hospice benefit. In section III.I, we are soliciting comments on processes that Part D plan sponsors could use to coordinate with Medicare hospices in determining coverage of drugs for hospice beneficiaries and resolving disagreements between the parties. In section III.E, we propose to require hospices to file both the notice of election (NOE) and the notice of termination/revocation (NOTR) on behalf of beneficiaries within 3 calendar days of admission/discharge. If an NOE is not filed timely, the days from the effective date of election to the date of filing the NOE would be the financial responsibility of the hospice. In section III.F, we propose to require the hospice to identify the attending physician on the election form. In section III.D, we propose that hospices complete their cap determinations, using a pro-forma spreadsheet, within 150 days after the cap period, and remit any overpayments at that time. Given concerns about hospices increasingly exceeding their aggregate cap, along with the average overpayment per beneficiary, we believe that this procedural change is necessary in order to better safeguard the Medicare Trust Fund.

This proposed rule, in section III.H, discusses updates to the hospice quality reporting program, including participation requirements for CY 2015 regarding the CAHPS® Hospice Survey, and reminds the hospice industry that last year we set the July 1, 2014 implementation date for the Hospice Item Set and the January 1, 2015 implementation date for the CAHPS® Hospice Survey.

More than seven new quality measures would be derived from these tools; therefore, no new measures are proposed this year. Section III.H of this rule also proposes changes related to the reconsideration process, extraordinary circumstance extensions or exemptions, and hospice quality reporting program (HQRP) eligibility requirements for newly certified hospices. Finally, this proposed rule provides: guidance on determining the beneficiary's eligibility for hospice in section III.C; discusses the delay in the implementation of the International Classification of Diseases, 10th Revision, Clinical Modification (ICD–10–CM); clarifies appropriate diagnosis reporting on hospice claims. We propose that, effective October 1, 2014, claims would be returned to the provider if the claim listed a non-specific symptom diagnosis as the principal hospice diagnosis in section III. J. We also propose a technical regulations text change in section III.K pertaining to the definition of ''social worker''.

C. Summary of Impacts

TABLE 1—IMPACT SUMMARY TABLE

Provision description	Transfers
FY 2015 Hospice Wage Index and Payment Rate Update.	The overall economic impact of this proposed rule is estimated to be $230 million in increased payments to hospices during FY 2015.
Provision description	**Total costs**
New Quality Reporting Requirements for Hospices (FY 2015).	$8.77 million.

II. Background

A. Hospice Care

Hospice care is an approach to treatment that recognizes that the impending death of an individual warrants a change in the focus from curative care to palliative care for relief of pain and for symptom management.

The goal of hospice care is to help terminally ill individuals continue life with minimal disruption to normal activities while remaining primarily in the home environment. A hospice uses an interdisciplinary approach to deliver medical, nursing, social, psychological, emotional, and spiritual services through use of a broad spectrum of professionals and other caregivers, with the goal of making the individual as physically and emotionally comfortable as possible. Hospice is compassionate patient and family-centered care for those who are terminally ill. It is a comprehensive, holistic approach to treatment that recognizes that the impending death of an individual necessitates a change from curative to palliative care.

Medicare regulations define palliative care as ''patient and family-centered care that optimizes quality of life by anticipating, preventing, and treating suffering.'' Palliative care throughout the continuum of illness involves addressing physical, intellectual, emotional, social, and spiritual needs and to facilitate patient autonomy, access to information, and choice'' (42 CFR 418.3). Palliative care is at the core of hospice philosophy and care practices, and is a critical component of the Medicare hospice benefit. As stated in the June 5, 2008 Hospice Conditions of Participation final rule (73 FR 32088), palliative care is an approach that ''optimizes quality of life by anticipating, preventing, and treating suffering.'' The goal of palliative care in hospice is to improve the quality of life of individuals, and their families, facing the issues associated with a life-threatening illness through the prevention and relief of suffering by means of early identification, assessment and treatment of pain and other issues. This is achieved by the hospice interdisciplinary team working with the patient and family to develop a comprehensive care plan focused on coordinating care services, reduce unnecessary diagnostics or ineffective therapies, and offering ongoing conversations with individuals and their families about changes in the disease. It is expected that this comprehensive care plan would shift over time to meet the changing needs of the patient and family as the individual approaches the end-of-life.

Medicare hospice care is palliative care for individuals with a prognosis of living 6 months or less if the terminal illness runs its normal course. As generally accepted by the medical community, the term ''terminal illness'' refers to an advanced and progressively deteriorating illness, and that the illness is diagnosed as incurable (please see section III.B for a discussion and solicitation of comments on a possible Medicare hospice definition of ''terminal illness''). When an individual is terminally ill, many health problems are brought on by underlying condition(s), as bodily systems are interdependent. In the June 5, 2008 Hospice Conditions of Participation final rule (73 FR 32088), we stated that ''the medical director must consider the primary terminal condition, related diagnoses, current subjective and objective medical findings, current medication and treatment orders, and information about unrelated conditions when considering the initial certification of the terminal illness.'' As referenced in our regulations at § 418.22(b)(1), to be eligible for Medicare hospice services, the patient's attending physician (if any) and the hospice medical director must certify that the individual is terminally ill, that is, the individual's prognosis is for a life expectancy of 6 months or less if the terminal illness runs its normal course as defined in section 1861(dd)(3)(A) of the Act and our regulations at § 418.3. The certification of terminal illness must include a brief narrative explanation of the clinical findings that supports a life expectancy of 6 months or less as part of the certification and recertification forms, as stated in § 418.22(b)(3).

The goal of hospice care is to make the hospice patient as physically and emotionally comfortable as possible, with minimal disruption to normal activities, while remaining primarily in the home environment. Hospice care uses an interdisciplinary approach to deliver medical, nursing, social, psychological, emotional, and spiritual services through the use of a broad spectrum of professional and other caregivers and volunteers. While the goal of hospice care is to allow for the individual to remain in his or her home environment, circumstances during the end-of-life may necessitate short-term inpatient admission to a hospital, skilled nursing facility (SNF), or hospice facility for procedures necessary for pain control or acute or chronic symptom management that cannot be managed in any other setting. These acute hospice care services are to ensure that any new or worsening symptoms are intensively addressed so that the individual can return to his or her home environment under a home level of care. Short-term, intermittent, inpatient respite services are also available to the family of the hospice patient when needed to relieve the family or other caregivers. Additionally, an individual can receive continuous home care during a period of crisis in which an individual requires primarily continuous nursing care to achieve palliation or management of acute medical symptoms so that the individual can remain at home. Continuous home care may be covered on a continuous basis for as much as 24 hours a day, and these periods must be predominantly nursing care per our regulations at § 418.204. A minimum of 8 hours of care must be furnished on a particular day to qualify for the continuous home care rate (§ 418.302(e)(4)).

Hospices are expected to comply with all civil rights laws, including the provision of auxiliary aids and services to ensure effective communication with patients or patient care representatives with disabilities consistent with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act, and to provide language access for such persons who are limited in English proficiency, consistent with Title VI of the Civil Rights Act of 1964. Further information about these requirements may be found at *http://www.hhs.gov/ocr/civilrights.*

B. History of the Medicare Hospice Benefit

Before the creation of the Medicare hospice benefit, hospice was originally run by volunteers who cared for the dying. During the early development stages of the Medicare hospice benefit, hospice advocates were clear that they wanted a Medicare benefit available that provided all-inclusive care for terminally-ill individuals, provided pain relief and symptom management, and offered the opportunity to die with dignity in the comfort of one's home rather than in an institutional setting.[1] As stated in the August 22, 1983 proposed rule entitled ''Medicare Program; Hospice Care'' (48 FR 38146), ''the hospice experience in the United States has placed emphasis on home care. It offers physician services, specialized nursing services, and other forms of care in the home to enable the terminally ill individual to remain at home in the company of family and friends as long as possible.'' The concept of a patient ''electing'' the hospice benefit and being certified as terminally ill were two key components in the legislation responsible for the creation of the Medicare Hospice Benefit (section 122 of the Tax Equity

[1] Connor, Stephen. (2007). Development of Hospice and Palliative Care in the United States. OMEGA. 56(1), p89–99.

and Fiscal Responsibility Act of 1982 (TEFRA), (Pub. L. 97–248)). Section 122 of TEFRA created the Medicare Hospice Benefit, which was implemented on November 1, 1983. Under sections 1812(d) and 1861(dd) of the Social Security Act (the Act), codified at 42 U.S.C. 1395d(d) and 1395x(dd), we provide coverage of hospice care for terminally ill Medicare beneficiaries who elect to receive care from a Medicare-certified hospice. Our regulations at § 418.54(c) stipulate that the comprehensive hospice assessment must identify the patient's physical, psychosocial, emotional, and spiritual needs related to the terminal illness and related conditions, and address those needs in order to promote the hospice patient's well-being, comfort, and dignity throughout the dying process. The comprehensive assessment must take into consideration the following factors: the nature and condition causing admission (including the presence or lack of objective data and subjective complaints); complications and risk factors that affect care planning; functional status; imminence of death; and severity of symptoms (§ 418.54(c)). The Medicare hospice benefit requires the hospice to cover all reasonable and necessary palliative care related to the terminal prognosis and related conditions, as described in the patient's plan of care. The December 16, 1983 Hospice final rule (48 FR 56008) requires hospices to cover care for interventions to manage pain and symptoms. Clinically, related conditions are any physical or mental conditions that are related to or caused by either the terminal illness or the medications used to manage the terminal illness.[2] See section III.B of this proposed rule for a discussion and solicitation of comments on a possible Medicare hospice definition of ''related conditions.'' Additionally, the hospice Conditions of Participation at § 418.56(c) require that the hospice must provide all services necessary for the palliation and management of the terminal illness, related conditions and interventions to manage pain and symptoms. Therapy and interventions must be assessed and managed in terms of providing palliation and comfort without undue symptom burden for the hospice patient or family.[3] For example, a hospice patient with lung cancer (the principal terminal diagnosis) may receive inhalants for shortness of breath (related to the terminal condition). The patient may also suffer from metastatic bone pain (a related condition) and would be treated with opioid analgesics. As a result of the opioid therapy, the patient may suffer from constipation (a related condition) and require a laxative for symptom relief. It is often not a single diagnosis that represents the terminal prognosis of the patient, but the combined effect of several conditions that makes the patient's condition terminal. In the December 16, 1983 Hospice final rule (48 FR 56010 through 56011), regarding what is related versus unrelated to the terminal illness, we stated: ''. . . we believe that the unique physical condition of each terminally ill individual makes it necessary for these decisions to be made on a case-by-case basis. It is our general view that hospices are required to provide virtually all the care that is needed by terminally ill patients.'' Therefore, unless there is clear evidence that a condition is unrelated to the terminal prognosis, all services would be considered related. It is also the responsibility of the hospice physician to document why a patient's medical needs would be unrelated to the terminal prognosis.

As stated in the December 16,1983 Hospice final rule, the fundamental premise upon which the hospice benefit was designed was the ''revocation'' of traditional curative care and the ''election'' of hospice care for end-of-life symptom management and maximization of quality of life (48 FR 56008). After electing hospice care, the patient typically returns to the home from an institutionalized setting or remains in the home, to be surrounded by family and friends, and to prepare emotionally and spiritually for death while receiving expert symptom management and other supportive services. Election of hospice care also includes waiving the right to Medicare payment for curative treatment for the terminal prognosis, and instead receiving palliative care to manage pain or symptoms.

The benefit was originally designed to cover hospice care for a finite period of time that roughly corresponded to a life expectancy of 6 months or less. Initially, beneficiaries could receive three election periods: Two 90-day periods and one 30-day period. Currently, Medicare beneficiaries can elect hospice care for two 90-day periods and an unlimited number of subsequent 60-day periods; however, the expectation remains that beneficiaries have a life expectancy of 6 months or less if the terminal illness runs its normal course.

C. Services Covered by the Medicare Hospice Benefit

One requirement for coverage under the Medicare Hospice Benefit is that hospice services must be reasonable and necessary for the palliation and management of the terminal illness and related conditions. Section 1861(dd)(1) of the Act establishes the services that are to be rendered by a Medicare certified hospice program. These covered services include: Nursing care; physical therapy; occupational therapy; speech-language pathology therapy; medical social services; home health aide services (now called hospice aide services); physician services; homemaker services; medical supplies (including drugs and biologics); medical appliances; counseling services (including dietary counseling); short-term inpatient care (including both respite care and procedures necessary for pain control and acute or chronic symptom management) in a hospital, nursing facility, or hospice inpatient facility; continuous home care during periods of crisis and only as necessary to maintain the terminally ill individual at home; and any other item or service which is specified in the plan of care and for which payment may otherwise be made under Medicare, in accordance with Title XVIII of the Act.

Section 1814(a)(7)(B) of the Act requires that a written plan for providing hospice care to a beneficiary who is a hospice patient be established before care is provided by, or under arrangements made by, that hospice program and that the written plan be periodically reviewed by the beneficiary's attending physician (if any), the hospice medical director, and an interdisciplinary group (described in section 1861(dd)(2)(B) of the Act). The services offered under the Medicare hospice benefit must be available, as needed, to beneficiaries 24 hours a day, 7 days a week (section 1861(dd)(2)(A)(i) of the Act). Upon the implementation of the hospice benefit, the Congress expected hospices to continue to use volunteer services, though these services are not reimbursed by Medicare (see Section 1861(dd)(2)(E) of the Act and (48 FR 38149)). As stated in the August 22, 1983 Hospice proposed rule, the hospice interdisciplinary group should be comprised of paid hospice employees as well as hospice volunteers (48 FR 38149). This expectation is in line with the history of hospice and philosophy of holistic, comprehensive, compassionate, end-of-life care.

Before the Medicare hospice benefit was established, Congress requested a demonstration project to test the

[2] Harder, PharmD, CGP, Julia. (2012). To Cover or Not To Cover: Guidelines for Covered Medications in Hospice Patients. The Clinician. 7(2), p1–3.

[3] Paolini, DO, Charlotte. (2001). Symptoms Management at End of Life. JAOA. 101(10). p609–615.

feasibility of covering hospice care under Medicare. The National Hospice Study was initiated in 1980 through a grant sponsored by the Robert Wood Johnson and John A. Hartford Foundations and CMS (then, the Health Care Financing Administration (HCFA)). The demonstration project was conducted between October 1980 and March 1983. The project summarized the hospice care philosophy as the following:

- Patient and family know of the terminal condition.
- Further medical treatment and intervention are indicated only on a supportive basis.
- Pain control should be available to patients as needed to prevent rather than to just ameliorate pain.
- Interdisciplinary teamwork is essential in caring for patient and family.
- Family members and friends should be active in providing support during the death and bereavement process.
- Trained volunteers should provide additional support as needed.

The cost data and the findings on what services hospices provided in the demonstration project were used to design the Medicare hospice benefit. The identified hospice services were incorporated into the service requirements under the Medicare hospice benefit. Importantly, in the August 22, 1983 hospice proposed rule, we stated ''the hospice benefit and the resulting Medicare reimbursement is not intended to diminish the voluntary spirit of hospices'' (48 FR 38149).

D. Medicare Payment for Hospice Care

Sections 1812(d), 1813(a)(4), 1814(a)(7), 1814(i), and 1861(dd) of the Act, and our regulations in part 418, establish eligibility requirements, payment standards and procedures, define covered services, and delineate the conditions a hospice must meet to be approved for participation in the Medicare program. Part 418, subpart G, provides for a per diem payment in one of four prospectively-determined rate categories of hospice care (routine home care, continuous home care, inpatient respite care, and general inpatient care), based on each day a qualified Medicare beneficiary is under hospice care (once the individual has elected). This per diem payment is to include all of the hospice services needed to manage the beneficiaries' care, as required by section 1861(dd)(1) of the Act. There has been little change in the hospice payment structure since the benefit's inception. The per diem rate based on level of care was established in 1983, and this payment structure remains today with some adjustments, as noted below:

1. Omnibus Budget Reconciliation Act of 1989

Section 6005(a) of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239) amended section 1814(i)(1)(C) of the Act and provided for the following two changes in the methodology concerning updating the daily payment rates: (1) Effective January 1, 1990, the daily payment rates for routine home care and other services in included in hospice care were increased to equal 120 percent of the rates in effect on September 30, 1989; and (2) the daily payment rate for routine home care and other services included in hospice care for fiscal years beginning on or after October 1, 1990, were the payment rates in effect during the previous Federal fiscal year increased by the hospital market basket percentage increase.

2. Balanced Budget Act of 1997

Section 4441(a) of the Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33) amended section 1814(i)(1)(C)(ii)(VI) of the Act to establish updates to hospice rates for FYs 1998 through 2002. Hospice rates were updated by a factor equal to the hospital market basket percentage increase, minus 1 percentage point. Payment rates for FYs from 2002 have been updated according to section 1814(i)(1)(C)(ii)(VII) of the Act, which states that the update to the payment rates for subsequent FYs will be the hospital market basket percentage increase for the FY. The Act requires us to use the inpatient hospital market basket to determine hospice payment rates.

3. FY 1998 Hospice Wage Index Final Rule

In the August 8, 1997 FY 1998 Hospice Wage Index final rule (62 FR 42860), we implemented a new methodology for calculating the hospice wage index based on the recommendations of a negotiated rulemaking committee. The original hospice wage index was based on 1981 Bureau of Labor Statistics hospital data and had not been updated since 1983. In 1994, because of disparity in wages from one geographical location to another, the Hospice Wage Index Negotiated Rulemaking Committee was formed to negotiate a new wage index methodology that could be accepted by the industry and the government. This Committee was comprised of representatives from national hospice associations; rural, urban, large and small hospices, and multi-site hospices; consumer groups; and a government representative. The Committee decided that in updating the hospice wage index, aggregate Medicare payments to hospices would remain budget neutral to payments calculated using the 1983 wage index, to cushion the impact of using a new wage index methodology. To implement this policy, a Budget Neutrality Adjustment Factor (BNAF) would be computed and applied annually to the pre-floor, pre-reclassified hospital wage index when deriving the hospice wage index, subject to a wage index floor.

4. FY 2010 Hospice Wage Index Final Rule

Inpatient hospital pre-floor and pre-reclassified wage index values, as described in the August 8, 1997 Hospice Wage Index final rule, are subject to either a budget neutrality adjustment or application of the wage index floor. Wage index values of 0.8 or greater are adjusted by the (BNAF). Starting in FY 2010, a 7-year phase-out of the BNAF began (August 6, 2009 FY 2010 Hospice Wage Index final rule, (74 FR 39384)), with a 10 percent reduction in FY 2010, an additional 15 percent reduction for a total of 25 percent in FY 2011, an additional 15 percent reduction for a total 40 percent reduction in FY 2012, an additional 15 percent reduction for a total of 55 percent in FY 2013, and an additional 15 percent reduction for a total 70 percent reduction in FY 2014. The phase-out would continue with an additional 15 percent reduction for a total reduction of 85 percent in FY 2015, and an additional 15 percent reduction for complete elimination in FY 2016. Note that the BNAF is an adjustment which increases the hospice wage index value. Therefore, the BNAF reduction is a reduction in the amount of the BNAF increase applied to the hospice wage index value. It is not a reduction in the hospice wage index value, or in the hospice payment rates.

5. The Affordable Care Act

Starting with FY 2013 (and in subsequent fiscal years), the market basket percentage update under the hospice payment system referenced in sections 1814(i)(1)(C)(ii)(VII) and 1814(i)(1)(C)(iii) of the Act will be annually reduced by changes in economy-wide productivity, as specified in section 1886(b)(3)(B)(xi)(II) of the Act, as amended by section 3132(a) of the Patient Protection and Affordable Care Act (Pub. L. 111–148) as amended by the Health Care and Education Reconciliation Act (Pub. L. 111–152) (the Affordable Care Act)). In FY 2013 through FY 2019, the market

basket percentage update under the hospice payment system will be reduced by an additional 0.3 percentage point (although for FY 2014 to FY 2019, the potential 0.3 percentage point reduction is subject to suspension under conditions as specified in section 1814(i)(1)(C)(v) of the Act).

In addition, sections 1814(i)(5)(A) through (C) of the Act, as amended by section 3132(a) of the Affordable Care Act, require hospices to begin submitting quality data, based on measures to be specified by the Secretary, for FY 2014 and subsequent fiscal years. Beginning in FY 2014, hospices which fail to report quality data will have their market basket update reduced by 2 percentage points.

Section 1814(a)(7)(D)(i) of the Act was amended by section 3132 (b)(2)(D)(i) of the Affordable Care Act, and requires, effective January 1, 2011, that a hospice physician or nurse practitioner have a face-to-face encounter with an individual to determine continued eligibility of the individual for hospice care prior to the 180th-day recertification and each subsequent recertification, and to attest that such visit took place. When implementing this provision, we decided that the 180th-day recertification and subsequent recertifications corresponded to the recertification for a beneficiary's third or subsequent benefit periods (CY 2011 Home Health Prospective Payment System final rule (75 FR 70435)). Further, section 1814(i)(6) of the Act, as amended by section 3132(a)(1)(B) of the Affordable Care Act, authorizes the Secretary to collect additional data and information determined appropriate to revise payments for hospice care and other purposes. The types of data and information suggested in the Affordable Care Act would capture accurate resource utilization, which could be collected on claims, cost reports, and possibly other mechanisms, as the Secretary determines to be appropriate. The data collected may be used to revise the methodology for determining the payment rates for routine home care and other services included in hospice care, no earlier than October 1, 2013, as described in section 1814(i)(6)(D) of the Act. In addition, we are required to consult with hospice programs and the Medicare Payment Advisory Commission (MedPAC) regarding additional data collection and payment revision options.

6. FY 2012 Hospice Wage Index Final Rule

When the Medicare Hospice Benefit was implemented, the Congress included an aggregate cap on hospice payments, which limits the total aggregate payments any individual hospice can receive in a year. The Congress stipulated that a ''cap amount'' be computed each year. The cap amount was set at $6,500 per beneficiary when first enacted in 1983 and is adjusted annually by the change in the medical care expenditure category of the consumer price index for urban consumers from March 1984 to March of the cap year (section 1814(i)(2)(B) of the Act). The cap year is defined as the period from November 1st to October 31st. As we stated in the August 4, 2011 FY 2012 Hospice Wage Index final rule (76 FR 47308 through 47314), for the 2012 cap year and subsequent cap years, the hospice aggregate cap will be calculated using the patient-by-patient proportional methodology, within certain limits. We will allow existing hospices the option of having their cap calculated via the original streamlined methodology, also within certain limits. New hospices will have their cap determinations calculated using the patient-by-patient proportional methodology. The patient-by-patient proportional methodology and the streamlined methodology are two different methodologies for counting beneficiaries when calculating the hospice aggregate cap. A detailed explanation of these methods is found in the August 4, 2011 FY 2012 Hospice Wage Index final rule (76 FR 47308 through 47314). If a hospice's total Medicare reimbursement for the cap year exceeded the hospice aggregate cap, then the hospice would have to repay the excess back to Medicare.

E. Trends in Medicare Hospice Utilization

Since the implementation of the hospice benefit in 1983, and especially within the last decade, there has been substantial growth in hospice utilization. The number of Medicare beneficiaries receiving hospice services has grown from 513,000 in FY 2000 to over 1.3 million in FY 2013. Similarly, Medicare hospice expenditures have risen from $2.9 billion in FY 2000 to an estimated $15.1 billion in FY 2013. Our Office of the Actuary (OACT) projects that hospice expenditures are expected to continue to increase, by approximately 8 percent annually, reflecting an increase in the number of Medicare beneficiaries, more beneficiary awareness of the Medicare Hospice Benefit for end-of-life care, and a growing preference for care provided in home and community-based settings. However, this increased spending is partly due to an increased average lifetime length of stay for beneficiaries, from 54 days in 2000 to 86 days in 2011, an increase of 59 percent.

There have also been noted changes in the diagnosis patterns among Medicare hospice enrollees. Specifically, there were notable increases between 2002 and 2007 in neurologically-based diagnoses, including various dementia diagnoses. Additionally, there have been significant increases in the use of non-specific, symptom-classified diagnoses, such as ''debility'' and ''adult failure to thrive.'' In FY 2012, both ''debility'' and ''adult failure to thrive'' were the first and third most common hospice diagnoses, respectively. ''Debility'' and ''adult failure to thrive'' continue to be among the most common hospice principal diagnoses (14 percent), and those, combined with ''dementia'' and Alzheimer's disease constituted approximately 30 percent of all claims-reported principal diagnosis codes reported in FY 2013 (see Table 2 below).

TABLE 2—THE TOP TWENTY PRINCIPAL HOSPICE DIAGNOSES, FY 2002, FY 2007, FY 2012, FY 2013

Rank	ICD–9/Reported principal diagnosis	Count	Percentage
	Year: FY 2002		
1	162.9 Lung Cancer	73,769	11
2	428.0 Congestive Heart Failure	45,951	7
3	799.3 Debility Unspecified	36,999	6
4	496 COPD	35,197	5
5	331.0 Alzheimer's Disease	28,787	4
6	436 CVA/Stroke	26,897	4
7	185 Prostate Cancer	20,262	3
8	783.7 Adult Failure To Thrive	18,304	3

TABLE 2—THE TOP TWENTY PRINCIPAL HOSPICE DIAGNOSES, FY 2002, FY 2007, FY 2012, FY 2013—Continued

Rank	ICD–9/Reported principal diagnosis	Count	Percentage
9	174.9 Breast Cancer	17,812	3
10	290.0 Senile Dementia, Uncomp.	16,999	3
11	153.0 Colon Cancer	16,379	2
12	157.9 Pancreatic Cancer	15,427	2
13	294.8 Organic Brain Synd Nec	10,394	2
14	429.9 Heart Disease Unspecified	10,332	2
15	154.0 Rectosigmoid Colon Cancer	8,956	1
16	332.0 Parkinson's Disease	8,865	1
17	586 Renal Failure Unspecified	8,764	1
18	585 Chronic Renal Failure (End 2005)	8,599	1
19	183.0 Ovarian Cancer	7,432	1
20	188.9 Bladder Cancer	6,916	1
.			
	Year: FY 2007		
1	799.3 Debility Unspecified	90,150	9
2	162.9 Lung Cancer	86,954	8
3	428.0 Congestive Heart Failure	77,836	7
4	496 COPD	60,815	6
5	783.7 Adult Failure To Thrive	58,303	6
6	331.0 Alzheimer's Disease	58,200	6
7	290.0 Senile Dementia Uncomp.	37,667	4
8	436 CVA/Stroke	31,800	3
9	429.9 Heart Disease Unspecified	22,170	2
10	185 Prostate Cancer	22,086	2
11	174.9 Breast Cancer	20,378	2
12	157.9 Pancreas Unspecified	19,082	2
13	153.9 Colon Cancer	19,080	2
14	294.8 Organic Brain Syndrome NEC	17,697	2
15	332.0 Parkinson's Disease	16,524	2
16	294.10 Dementia In Other Diseases w/o Behav. Dist	15,777	2
17	586 Renal Failure Unspecified	12,188	1
18	585.6 End Stage Renal Disease	11,196	1
19	188.9 Bladder Cancer	8,806	1
20	183.0 Ovarian Cancer	8,434	1
.			
	Year: FY 2012		
1	799.3 Debility Unspecified	161,163	12
2	162.9 Lung Cancer	89,636	7
3	783.7 Adult Failure To Thrive	86,467	7
4	428.0 Congestive Heart Failure	84,333	6
5	496 COPD	74,786	6
6	331.0 Alzheimer's Disease	64,199	5
7	290.0 Senile Dementia, Uncomp.	56,234	4
8	429.9 Heart Disease Unspecified	32,081	2
9	436 CVA/Stroke	31,987	2
10	294.10 Dementia In Other Diseases w/o Behavioral Dist	27,417	2
11	174.9 Breast Cancer	22,421	2
12	153.9 Colon Cancer	22,197	2
13	157.9 Pancreatic Cancer	22,007	2
14	332.0 Parkinson's Disease	21,183	2
15	185 Prostate Cancer	21,042	2
16	294.8 Other Persistent Mental Dis.—classified elsewhere	17,762	1
17	585.6 End Stage Renal Disease	17,545	1
18	518.81 Respiratory Failure	12,962	1
19	294.11 Dementia In Other Diseases w/Behavioral Dist	11,751	1
20	188.9 Bladder Cancer	10,511	1
.			
	Year: FY 2013		
1	799.3 Debility Unspecified	127,308	9
2	428.0 Congestive Heart Failure	95,850	7
3	162.9 Lung Cancer	91,263	6
4	496 COPD	81,944	6
5	331.0 Alzheimer's Disease	79,360	6
6	783.7 Adult Failure to Thrive	71,033	5
7	290.0 Senile Dementia, Uncomp.	60,441	4
8	429.9 Heart Disease Unspecified	36,817	3

TABLE 2—THE TOP TWENTY PRINCIPAL HOSPICE DIAGNOSES, FY 2002, FY 2007, FY 2012, FY 2013—Continued

Rank	ICD–9/Reported principal diagnosis	Count	Percentage
9	436 CVA/Stroke	34,330	2
10	294.10 Dementia In Other Diseases w/o Behavioral Dist	30,884	2
11	332.0 Parkinson's Disease	25,308	2
12	153.9 Colon Cancer	23,133	2
13	294.20 Dementia Unspecified w/o Behavioral Dist	23,108	2
14	174.9 Breast Cancer	22,986	2
15	157.9 Pancreatic Cancer	22,267	2
16	185 Prostate Cancer	21,701	2
17	585.6 End-Stage Renal Disease	19,212	1
18	518.81 Acute Respiratory Failure	15,900	1
19	294.8 Other Persistent Mental Dis.—classified elsewhere	14,337	1
20	294.11 Dementia In Other Diseases w/Behavioral Dist	13,648	1

Note(s): The frequencies shown represent beneficiaries that had at least one claim with the specific ICD–9–CM code reported as the principal diagnosis. Beneficiaries could be represented multiple times in the results if they have multiple claims during that time period with different principal diagnoses.

Source: FY 2002, 2007, and 2012 hospice claims data from the Chronic Conditions Data Warehouse (CCW), accessed on February 14 and February 20, 2013. FY 2013 hospice claims data from the CCW, accessed on February 27, 2014.

III. Provisions of the Proposed Rule

A. Hospice Payment Reform: Research and Analyses

In 2010, the Congress amended section 1814(i)(6) of the Act with section 3132(a) of the Affordable Care Act. The amendment authorized the Secretary to collect additional data and information determined appropriate to revise payments for hospice care and for other purposes. The data collected may be used to revise the methodology for determining the payment rates for routine home care and other services included in hospice care, no earlier than October 1, 2013, as described in section 1814(i)(6)(D) of the Act. We are also required to consult with hospice programs and the Medicare Payment Advisory Commission (MedPAC) regarding additional data collection and payment revision options. Since 2010, we have been working with our hospice reform contractor, Abt Associates, to review the most current peer-reviewed literature; conduct research and analyses; identify potential vulnerabilities in the current payment system; and research and develop hospice payment model options. We recently required additional information on hospice claims regarding drugs and certain durable medical equipment, effective April 1, 2014; and are in the process of finalizing changes to the hospice cost report to better collect data on the costs of providing hospice care. The additional information on hospice claims and the hospice cost report will be used in our hospice payment reform efforts, once the data are available for analysis.

The research and analyses conducted thus far on available Medicare claims and cost report data have highlighted hospice utilization trends that could raise concerns regarding the viability of the Medicare hospice program and the impact of beneficiary access to quality end of life care. In March 2009, the Medicare Payment Advisory Commission (MedPAC) recommended that Medicare improve its payment system for hospice services to address a misalignment between Medicare's payments and hospice's costs that created incentives for providers to enroll patients who are more likely to have long stays because those stays are more profitable than short ones (*http://www.medpac.gov/chapters/Mar09_Ch06.pdf*). MedPAC 's June 2013 Report To Congress on Medicare and the Health Care Delivery System reiterated concerns about utilization trends and suggested that such trends were driven by a misalignment in the payment system (*http://www.medpac.gov/chapters/Jun13_Ch05.pdf*). MedPAC's June 2013 report added that, while payment reform would better align payments with costs, additional administrative controls were necessary to balance incentives and strengthen provider compliance. As such, we believe that a critical goal of the Medicare hospice payment system is to strengthen and safeguard the current scope of the Medicare hospice benefit. This will provide a solid foundation on which to reform the methodology used to pay for Medicare hospice services. Program integrity is being addressed immediately while we fully develop our data and research to address payment reform in the near future.

Abt Associates, with its subcontractor Brown University, has developed a technical report entitled, ''Medicare Hospice Payment Reform: Analyses to Support Payment Reform'', dated May 1, 2014 (hereafter, referred to as the May 2014 Technical Report) that thoroughly describes the analytic file and extensive work performed on analyzing current hospice utilization data, of which many of the results of the analyses are presented in this proposed rule. Both the May 2014 Technical Report and an updated literature review will be available on our hospice center Web page in May, 2014 at: *http://www.cms.gov/Center/Provider-Type/Hospice-Center.html* in the ''Research and Analyses'' section. We further examined hospice utilization data and developed a provider-level file to identify aberrant hospice behavior. The provider-level file contains information on beneficiaries who were discharged (alive or deceased) in Calendar Year (CY) 2012 and includes claims data from January 1, 2010 through December 31, 2012. Some of the findings described in this section, are based on this provider-level file.

1. Beneficiaries Dying Without Skilled Visits in the Last Days of Life

Hospice clinicians are experts in recognizing changes as a patient is approaching the last few days of life and helping to prepare and support the patient and family. Most individuals approaching end-of-life have noted declines over the several days prior to death. As such, the expectation is that there would be an increased need for hospice services in the days leading up to the hospice beneficiary's death. Although we recognize that prognostication is not an exact science, there are hallmark physical, functional, nutritional and cognitive changes that are typically present leading up the hospice patient's death (see section III.C of this proposed rule).

When looking at skilled visits provided in the last days of life, as reported on the hospice claim, our

analysis found that a relatively high percentage (28.9 percent) of hospice decedents who were receiving RHC on their last day of life did not receive a skilled visit on that day (see Table 3 below). This could be explained, in part, by sudden or unexpected death. Expanding this analysis to skilled visits provided in the last two to four days of life, we found that 14.4 percent of hospice decedents did not receive skilled visits in the last 2 days of life and 6.2 percent of hospice decedents did not receive skilled visits in the last 4 days of life. While this could also be explained, in part, by sudden or unexpected death, we are concerned with the possibility that those beneficiaries and their families are not receiving hospice care and support at the very end of life. If hospices are actively engaging with the beneficiary and the family throughout the election period, we would expect to see skilled visits during those last days of life.

TABLE 3—FREQUENCY AND PERCENTAGE OF DECEDENTS NOT RECEIVING SKILLED VISITS AT THE END OF LIFE, CALENDAR YEAR 2012

	Number of decedents	Percentage of decedents with no skilled visits
No skilled visits on last day (and last day was RHC)	656,355	28.9
No skilled visits on last two days (and last two days were RHC)	622,334	14.4
No skilled visits on last three days (and last three days were RHC)	585,648	9.1
No skilled visits on last four days (and last four days were RHC)	551,359	6.2

Note(s): Skilled visit was considered to be a visit from a social worker, therapist, or nurse.
Source: Beneficiaries whose last days of hospice enrollment were billed to the RHC level of care using 100% of hospice days from the Hospice Standard Analytic File (SAF), Calendar Year (CY) 2012.

Further analysis of skilled visits during the last two days of life found that 10.3 percent of very short stay decedents (5 days or less) did not receive skilled visits during the last two days of life. In contrast, 15.9 percent of decedents with lengths of stay 181 days or longer did not receive visits in the last two days of life. Newer hospices (5 years or less since Medicare certification) were more likely to have decedents with no skilled visits during the last two days of life (17.8 percent) compared to older hospices (6 years or more since Medicare certification) (14.0 percent). We also found geographic differences in this analysis. The five states with the lowest percentage of decedents with no skilled visits on the last two days of life included: Wisconsin (5.7 percent), North Dakota (7.3 percent), Vermont (7.5 percent), Tennessee (7.5 percent), and Kansas (8.7 percent). The five states with the highest percentage of decedents with no skilled visits on the last two days of life included: New Jersey (23 percent), Massachusetts (22.9 percent), Oregon (21.2 percent), Washington (21 percent), and Minnesota (19.4 percent).

Using the provider-level file referenced above, we also found that, on average, hospices did not report any skilled visits in the last two days of life for 9.7 percent of their decedents who died receiving routine home care.[4] Nearly 5 percent of hospices did not provide any skilled visits in the last two days of life to more than 50 percent of their decedents receiving routine home care on those last two days; the average lifetime length of stay among those decedents was 143 days. We note that the average lifetime length of stay in our provider-level file was 95.4 days (among beneficiaries who were discharged alive or deceased in CY 2012). Furthermore, we found that 34 hospices did not make any skilled visits in the last 48 hours of life to any of their decedents who died while receiving routine home care.

2. General Inpatient Care, Continuous Home Care, and Inpatient Respite Care Utilization

Medicare Conditions of Participation require hospices to demonstrate that they are able to provide all four levels of care—Routine Home Care (RHC), General Inpatient Care (GIP), Continuous Home Care (CHC) and Inpatient Respite Care (IRC) to be a certified Medicare hospice provider. As stated in our regulations at § 418.302(b)(4), a general inpatient care (GIP) day is a day in which an individual who has elected hospice care, receives general inpatient care in an inpatient facility for pain control or acute or chronic symptom management which cannot be managed in other settings. For FY 2014, the payment rate for GIP was $694.19 per day compared to $156.06 for a day of RHC.

While the goal of hospice care is to allow for the individual to remain in his or her home environment, circumstances during the end-of-life may necessitate short-term inpatient admission to a hospital, skilled nursing facility (SNF), or hospice inpatient facility for procedures necessary for pain control or acute or chronic symptom management that cannot be managed in any other setting. These acute hospice care services are to ensure that any new or worsening symptoms are intensively addressed so that the individual can return to his or her home environment under a home level of care.

As part of our reform work, we analyzed CY 2012 data to better understand GIP utilization. We found that 77.3 percent of beneficiaries did not have any GIP care in 2012. Using provider-level data for beneficiaries discharged in 2012, we also found that 21.1 percent of hospices did not provide any GIP care to their beneficiaries. While there are appropriate circumstances where a hospice provides no GIP (for example, when a provider only has a few patients, none of whom needs GIP), we are concerned that more than a fifth of hospices not providing any GIP may be an indication that hospice beneficiaries do not have adequate access to a necessary level of care for acute or chronic symptom management. We also found that there were site of service differences such that the longest GIP length of stay was in the inpatient hospice setting (6.1 days) and shortest at in the inpatient hospital setting (4.5 days). Over two-thirds of GIP days were provided in an inpatient hospice setting (68 percent), and about a quarter of GIP days were provided in an inpatient hospital (24.9 percent). Only 5.5 percent of GIP days were provided in a SNF.

[4] The provider-level analysis conducted on whether skilled visits were provided in the last two days of life only examined instances where the decedent was receiving routine home care in the last two days of life. We note that 21 providers did not have any decedents that died while on routine home care.

As stated in our regulations at § 418.302(b)(2), a continuous home care day is a day on which an individual who has elected to receive hospice care, is not in an inpatient facility, and receives hospice care consisting predominantly of nursing care on a continuous basis at home. Home health aide (also known as a hospice aide) or homemaker services, or both, may also be provided on a continuous basis. Continuous home care is only furnished during brief periods of crisis as described in § 418.204(a), and only as necessary to maintain the terminally ill patient at home. Continuous home care may be covered on a continuous basis for as much as 24 hours a day, and these periods must be predominantly nursing care per our regulations at § 418.204. A minimum of 8 hours of care must be furnished on a particular day to qualify for the continuous home care rate (§ 418.302(e)(4)).

As part of our reform work, we analyzed CY 2012 data to better understand CHC utilization. Overall, approximately 0.4 percent of all hospice days in 2012 were billed as CHC, but that percentage decreases to 0.2 when a large chain provider with a large percentage of its hospice days billed as CHC days was excluded. Although 42.7 percent of hospices billed at least 1 day of CHC, we found considerable variation in the share of CHC days among hospices that provided any CHC. Almost 90 percent of hospices that provided any CHC had less than 1 percent of their days billed as CHC, but four hospices billed more than 10 percent of their days as CHC. Forty hospices accounted for 46 percent of all CHC days and a single hospice accounted for over a quarter of all CHC days. Among hospices who billed for providing CHC, 9.4 percent provided over half of their CHC days to beneficiaries residing in a nursing home. For CHC, a hospice must provide a minimum of 8 hours of care during a 24-hour day, which begins and ends at midnight.

Finally, we analyzed inpatient respite care (IRC) utilization in CYs 2005 through 2012. IRC is provided in an approved facility, as needed, on an occasional basis to relieve the family caregivers for up to 5 consecutive days. Payment for IRC is subject to the requirement that it may not be provided consecutively for more than 5 days at a time. As stated in our regulations at § 418.302(e)(5), payment for the sixth and any subsequent day of respite care is made at the routine home care rate. Overall, while the percentage of beneficiaries receiving at least 1 day of IRC care is increasing from 1.44 percent in CY 2005 to 3.4 percent in CY 2012, only a small percentage of beneficiaries utilize IRC. We also found that 26 percent of hospices did not bill for any IRC days in CY 2012. IRC is a critical part of the Medicare hospice benefit, providing vital support and relief to the patient's caregiver and family. We will continue to monitor utilization of IRC level of care, over time, to ensure beneficiaries receiving hospice care have access to respite services for their caregivers.

The variation in the provision of GIP, CHC, and IRC could suggest that the level of hospice care that a beneficiary receives may not always be driven by patient factors. Medicare Conditions of Participation require hospices to demonstrate that they are able to provide all four levels of care—RHC, GIP, CHC, and IRC—in order to be a certified Medicare hospice provider. We will continue to monitor GIP, CHC, and IRC use to identify hospices with aberrant utilization patterns, to identify hospices that may be in violation of the CoPs or of payment regulations, and to refer hospices identified through our analysis to Survey and Certification, to the Office of Financial Management, and to the Center for Program Integrity for further investigation.

3. Hospice Live Discharges

Currently, federal regulations allow a patient who has elected to receive Medicare hospice services to revoke that election at any time. That patient may re-elect hospice benefits at any time for any other election period that is still available. However, federal regulations provide limited opportunity for a Medicare hospice provider to discharge a patient from its care. Discharge from hospice care is permissible when the patient moves out of the provider's service area, is determined to be no longer terminally ill, or for cause. Hospices may not automatically or routinely discharge the patient at its discretion, even if the care may be costly or inconvenient. Neither should the hospice request or demand that the patient revoke his/her election.

Our regulations also describe that if the hospice patient (or his/her representative) revokes the hospice election, Medicare coverage of hospice care for the remainder of that period is forfeited. The patient may, at any time, re-elect to receive hospice coverage for any other hospice election period that he or she is eligible to receive (§ 418.28(c)(3) and § 418.24(e)). During the time period between revocation/discharge and the re-election of the hospice benefit, Medicare coverage would resume for those Medicare benefits previously waived.

Prior to 2012, claims data provided limited information about the reason a hospice patient was discharged from a hospice's care. Starting July 1, 2012, the discharge information collected on the Medicare claim was expanded to capture the reason for all types of discharge, that is, if the discharge was due to a death, revocation, transfer to another hospice, moving out of the hospice's service area, discharge for cause, or due to the patient no longer being considered terminally ill (that is, no longer qualifying for hospice services). Between 2000 and 2012, the overall rate of live discharges increased from 13.2 percent of hospice discharges to 18.1 percent in 2012. In 2010, the rate of live discharges varied by state (from 12.8 percent in Connecticut to 40.5 percent in Mississippi) and by hospice provider (from a 25th percentile 9.5 percent to 75th percentile of 26.4 percent). Furthermore, analysis of our provider-level file shows that of the 3,702 hospices in our file, 71 hospices had a live discharge on 100 percent of their beneficiaries. The average lifetime length of stay for these hospices was 193 days compared to the national average lifetime length of stay of 95.4 days (among beneficiaries who were discharged alive or deceased in CY 2012). We have shared this information with the Office of Financial Management and with the Center for Program Integrity for their review and follow-up.

One study of hospice live discharges in cancer patients noted that smaller hospices and for-profit hospices had a higher rate of hospice live discharges.[5] Our subcontractors at Brown University studied 2010 hospice live discharges among all diagnoses, finding that not-for-profit hospice programs had a lower rate of hospice live discharges than for-profit hospice programs (14.6 percent vs. 22.4 percent, p<=.001). Small for-profit hospices in operations 5 years or less had a higher rate of hospice live discharges compared to older, for-profit hospices (31.5 percent vs. 12.8 percent, p<=.001). We are also concerned over patterns of revocations and elections of the Medicare hospice benefit for the purpose of potentially avoiding costly hospitalizations or expensive procedures. In 2010, 13,770 out of the 182,172 live discharges had a pattern of hospice discharge, hospital admission, and hospice readmission. These cases

[5] Carlson MD, Herrin J, Du Q, et al. Hospice characteristics and the disenrollment of patients with cancer. *Health Serv Res.* Dec 2009;44(6):2004–2021

accounted for $126 million dollars in Medicare payments for the hospitalization between hospice election periods. Nearly half of these Medicare payments are accounted for in ten states with the highest rate of this pattern of discharges (that is, MS, OK, AL, SC, MD, VA, TX, NJ, GA, and LA accounted for $56.0 million dollars of the hospitalization costs).

We understand that the rate of live discharges should not be zero, given the uncertainties of prognostication and the ability of patients and their families to revoke the hospice election at any time. However, Medicare hospice care is a comprehensive patient and family focused care model designed to optimize quality of life by anticipating, preventing, and treating pain and symptoms. We are concerned that patterns of discharge, hospital admission, and hospice readmission do not provide a comprehensive, coordinated care experience for terminally ill patients.

4. Non-hospice Spending for Hospice Beneficiaries During an Election

When a beneficiary elects the Medicare hospice benefit, he or she waives the right to Medicare payment for services related to the terminal illness and related conditions, except for services provided by the designated hospice and the attending physician. However, Medicare payment is allowed for covered Medicare items or services which are unrelated to the terminal illness and related conditions. When a hospice beneficiary receives items or services unrelated to the terminal illness and related conditions from a non-hospice provider, that provider can bill Medicare for the items or services, but must include on the claim a GW modifier (if billed on a professional claim) or condition code 07 (if billed on an institutional claim). Prescription Drug Events (PDEs) unrelated to the terminal illness and related conditions for which hospice beneficiaries are receiving hospice care are billed to Part D and do not require a modifier or a condition code.

In follow up to our initial analysis of hospice drugs being paid through Part D (78 FR 48245–48246), we analyzed the magnitude of Medicare spending outside of the hospice benefit for items or services provided to hospice beneficiaries during a hospice election from Parts A, B, and D. In CY 2012, we found that Medicare paid $710.1 million for Part A and Part B items or services while a beneficiary was receiving hospice care. We estimated that 76.5 percent of the $710.1 million included either a GW modifier or a condition code 07 on the claim, which indicated that the services identified by the provider or supplier as unrelated to the terminal illness and related conditions. The remaining 23.5 percent of this $710.1 million was for claims without a GW modifier or condition code 07, some of which may have processed due to late filing of the notice of election (NOE).

The $710.1 million paid for Part A and Part B items or services was for durable medical equipment (7.0 percent), inpatient care (care in long-term care hospitals, inpatient rehabilitation facilities, acute care hospitals; 28.6 percent), outpatient Part B services (16.9 percent), other Part B services (also known as physician, practitioner and supplier claims, such as labs and diagnostic tests, ambulance transports, and physician office visits; 37.4 percent), skilled nursing facility care (5.7 percent), and home health care (4.5 percent). Part A and Part B non-hospice spending occurred mostly for hospice beneficiaries who were at home (43.3 percent). We also found that 28.3 percent of hospice beneficiaries were in a nursing facility, 14.1 percent were in an inpatient setting, 10.2 percent were in an assisted living facility, and 4.1 percent were in other settings. Although the average daily rate of expenditures outside the hospice benefit was $7.91, we found differences amongst states where beneficiaries receive care. The highest rates per day occurred for hospice beneficiaries residing in West Virginia ($13.91), or in the South (Florida ($13.17), Texas ($12.45), Mississippi ($11.91), and South Carolina ($10.16)).

Another area of concern in high non-hospice Medicare spending occurring during a hospice election is hospital emergency room (ER) visits and observation stays. Ninety-five percent of these ER visits and observation stays were billed and paid outside of the hospice benefit with condition code 07 on the claim. Using data on CY 2010 hospice admissions, followed through discharge or December 31, 2011 (whichever came first), we found that 8.8 percent of hospice beneficiaries had a total of 87,720 ER visits/observation stays billed to Medicare during their hospice election, at a cost of $268.4 million. The majority of these beneficiaries (77.6 percent) only experienced a single ER visit/observation stay, but 20.9 percent had between 2 and 4 ER visits/observation stays during their election, and 1.4 percent had more than 5 ER visits/observation stays during their hospice election. Although some beneficiaries may go directly to the ER rather than contacting the hospice first, 22.3 percent had 2 or more ER visits; these results may indicate that the hospice is not aware of the beneficiary's condition, the hospice is not being responsive to beneficiary needs, or related conditions are being treated as if they were unrelated. Most ER visits/observation stays occurred in younger beneficiaries with non-cancer diagnoses, in beneficiaries in newer hospices, and in beneficiaries receiving care in the South, with Mississippi and Oklahoma having the highest rates (21.1 and 20.5 ER visits/observation stays per 100 hospice admissions, respectively). The most frequently occurring Diagnostic Related Groups (DRGs) associated with these ER visits/observation stays were septicemia or severe sepsis, kidney and urinary tract infections, hip and femur procedures, simple pneumonia and pleurisy, and gastrointestinal hemorrhage. Some of these frequently occurring DRGs are conditions which are common at end-of-life, and could be attended to in the home or with a GIP level of care. This raises concerns about whether the ER visits/observation stays were actually related to the terminal illness and related conditions and should have been covered by the hospice.

In addition to analyzing data from Parts A and B of Medicare, we analyzed CY 2012 Part D data which showed $ 417.9 million in total drug spending by Medicare, states, beneficiaries, and other payers, for hospice beneficiaries during a hospice election. Table 4 details the various components of Part D spending.

TABLE 4—DRUG COST SOURCES FOR HOSPICE BENEFICIARIES' 2012 DRUGS RECEIVED THROUGH PART D

Component	Description	Total Expenditures
Patient Pay Amount	The dollar amount the beneficiary paid that is not reimbursed by a third party	$48,191,067
Low Income Cost-Sharing Subsidy	Medicare payments to plans to subsidize the cost-sharing liability of qualifying low-income beneficiaries at the point of sale.	117,558,814

TABLE 4—DRUG COST SOURCES FOR HOSPICE BENEFICIARIES' 2012 DRUGS RECEIVED THROUGH PART D—Continued

Component	Description	Total Expenditures
Other True Out-of-Pocket Amount	Records all other third-party payments on behalf of beneficiary. Examples are state pharmacy assistance programs and charities.	2,366,896
Patient Liability Reduction due to Other Payer Amount.	Amount patient liability reduced due to other benefits. Examples are Veteran's Administration and TRICARE.	3,120,834
Covered Drug Plan Paid Amount	Contains the net amount the plan paid for standard benefits	217,370,068
Non-Covered Plan Paid Amount	Contains the net amount the plan paid beyond standard benefits. Examples include supplemental drugs, supplemental cost-sharing, and OTC drugs paid under plan administrative costs.	16,985,982
Components' Total		405,593,660
Unknown	Unreconciled/Unreported Difference between total Gross Drug Costs and Reported payer sources (includes sales taxes, drug dispensing fees, and drugs' ingredient costs).	12,307,603
Gross Total Drug Costs, Reported		417,901,263

Source: Abt Associates analysis of 100% 2012 Medicare Claim Files. For more information on the components above and on Part D data, go to the Research Data Assistance Center's (ResDAC's) Web site at *http://www.resdac.org/.*

The portion of the $417.9 million total Part D spending which was paid by Medicare is the sum of the Low Income Cost-Sharing Subsidy and the Covered Drug Plan Paid Amount, or $334.9 million.

Medicare Spending: In total, actual non-hospice Medicare expenditures occurring during a hospice election in CY 2012 were $710.1 million for Parts A and B spending, plus $334.9 million for Part D spending, or $1 billion dollars. This figure is comparable to the estimated $1 billion MedPAC reported during its December 2013 public meeting.[6] Associated with this $1 billion in Medicare spending were cost sharing liabilities such as co-payments and deductibles that beneficiaries incurred. Hospice beneficiaries had $135.5 million in cost-sharing for items and services that were billed to Medicare Parts A and B, and $48.2 million in cost-sharing for drugs that were billed to Medicare Part D, while they were in a hospice election. In total, this represents a 2012 beneficiary liability of $183.7 million for Parts A, B, and D items or services provided to hospice beneficiaries during a hospice election. Therefore, the total non-hospice costs paid by Medicare or due from beneficiaries for items or services provided to hospice beneficiaries during a hospice election were over $1.2 billion in CY 2012.

All-Payer Spending: Under Part D, gross covered drug cost on a claim includes the amount paid by the Part D plan, the beneficiary's cost sharing, and any amounts paid by others on the beneficiary's behalf. These latter amounts include the low-income subsidy amount paid by Medicare for beneficiaries who are subsidy-eligible, amounts paid by other payers whose payments can be counted toward the beneficiary's true out-of-pocket (TrOOP) costs, and amounts paid by others whose payments, though not TrOOP-eligible, reduce the amount of the beneficiary's liability. Accumulated gross covered drug costs are used to establish the beneficiary's position in the benefit. That is, these costs determine when the beneficiary has met plan's deductible, if any, and moves into the initial coverage period, and when his or her initial coverage period ends and the coverage gap begins. TrOOP, whether paid by the beneficiary or on the beneficiary's behalf by a TrOOP-eligible payer, determines when the beneficiary has met the annual out-of-pocket threshold and moves into the catastrophic phase of the benefit. Thus, administration of the Medicare prescription drug benefit is dependent upon both gross covered drug costs and TrOOP. As such, we are also describing total non-hospice Part D spending, both Medicare and non-Medicare. Non-hospice Part D spending for hospice beneficiaries during a hospice election was incurred by Medicare, by States, by the Veterans Administration, by TRICARE, by charities, and by other payers, in addition to the cost-sharing liabilities incurred by beneficiaries.

Part D spending by all-payers that occurs for hospice beneficiaries during a hospice election, including beneficiary cost-sharing, totaled $417.9 million in CY 2012. If this is added to the $710.1 million in Medicare spending for Parts A and B, and $135.5 million in cost sharing for Parts A and B, total non-hospice costs are $1.3 billion. We do not have data on other payers' spending for Part A or Part B services. Of note, 51.6 percent of this $1.3 billion is associated with 373 hospices, with an average total per beneficiary of $1,289 in non-hospice costs.

On December 6, 2013 and March 3, 2014, we issued memoranda to all Part D plan sponsors and Medicare hospice providers (available at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/Hospice/Downloads/Hospice-PartD-Payment.pdf* and *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/Hospice/Downloads/Part-D-Payment-Hospice-Final-2014-Guidance.pdf,* respectively). These memoranda reiterated longstanding policy regarding the coverage of drugs in the Medicare hospice benefit, and Part D guidance regarding payment for drugs for hospice beneficiaries under Part D. These memoranda also contained new clarified guidance for addressing the determination of payment responsibility for Part D drugs for hospice beneficiaries in 2014 and the need for rulemaking to address the use of standardized processes for determining payment responsibility, recovering payment when the wrong party has paid, and resolving disputes regarding payment responsibility. We encourage providers to review these important memoranda at: *http://www.cms.gov/Center/Provider-Type/Hospice-Center.html,* and in section III.I in this proposed rule.

The dollars spent by Part D and by beneficiaries for drugs covered outside of the hospice benefit for hospice beneficiaries during a hospice election raise concerns about whether some of these drugs should have been paid for by the hospice. We examined drug costs incurred by hospices from 2004 to 2012, using hospice cost report data adjusted to constant 2010 dollars. We saw a declining trend in the drug costs per patient day, with costs declining from a mean of $20 per patient-day in 2004 to

[6] MedPAC, ''Assessing payment adequacy and updating payments: hospice services'', December 13 2013. Available at: *http://www.medpac.gov/transcripts/hospice_December2013_Public.pdf.*

$11 per patient-day in 2012 (see Table 5 below). We recognize that many hospices have become more efficient in their operations, but are concerned that the decline in drug costs is of a magnitude that could suggest that some hospices are not providing, and thus are not incurring the costs for, all needed patient medications.

TABLE 5—COSTS PER PATIENT-DAY BY YEAR, 2010 DOLLARS

	2004	2005	2006	2007	2008	2009	2010	2011	2012
Number	n = 1,047	n = 1,218	n = 1,490	n = 1,694	n = 1,834	n = 1,882	n = 1,929	n = 2,015	n = 2,054
Provider-level drug costs per patient-day									
Mean	$20	$18	$17	$15	$14	$13	$12	$11	$11
Std dev	(10)	(11)	(11)	(9)	(9)	(9)	(7)	(6)	(6)
Median	$20	$17	$16	$15	$14	$13	$12	$11	$10
Trimmed means									
1%–99% ...	$21	$19	$17	$16	$15	$14	$13	$12	$11
5%–95% ...	$20	$18	$16	$15	$14	$13	$12	$11	$10

Source: Freestanding hospice cost reports with HCRIS release date of 1/23/2014. The costs are averaged at the provider-level and adjusted to constant 2010 dollars using the Producer Price Index for prescription pharmaceuticals.

Notes: We excluded cost reports with period less than 10 months or greater than 14 months, missing information or negative reported values for total costs or payments, were in the top and bottom 1% of cost per day, were in the top and bottom 5% of provider margins, and where the aggregate of cost centers does not equal total costs as reported.

We will continue to monitor non-hospice Medicare spending for beneficiaries in hospice elections.

B. Solicitation of Comments on Definitions of ''Terminal Illness'' and ''Related Conditions''

1. The Development of the Medicare Hospice Benefit

Dame Cicely Saunders introduced the idea of hospice care in the United States during a lecture at Yale University in 1963. During the same decade, the international best-seller, *On Death and Dying,* published in 1969, by Dr. Elisabeth Kubler-Ross, helped to bring death out of secrecy and brought new public awareness and discussion about dying for the first time. Her interviews with over 500 dying patients shed new light on the dying process, as well as the needs and treatment wishes of those who were at the end-of-life. Her hallmark work argued for end-of-life care provided in the home, rather than in an institution, and stressed the importance of patients' being an integral part of their treatment decision-making.[7] In 1970, there were no formal hospice programs in the United States. However, healthcare providers started to recognize the need for a care delivery model to address the needs of those individuals who no longer wanted to seek out the aggressive, medical, curative model of healthcare for advancing illnesses and injuries. They also focused on a care delivery model that would provide pain and symptom relief that would offer an alternative to hospitalization and would focus on the ''total person,'' as he or she approached the end-of-life. The hospice model of care, which had been previously introduced to the United States by Cicely Saunders, was viewed to be the type of care delivery model that could offer those services.

In 1972, Dr. Elisabeth Kubler-Ross testified at the first national hearings on the subject of death with dignity, conducted by the U.S. Senate Special Committee on Aging, and the first hospice legislation was introduced in the United States Senate, but was not enacted.[8] Florence Wald, the Dean of the Yale School of Nursing, who attended the 1963 lecture given by Cicely Saunders, along with two pediatricians and a chaplain, founded the first United States hospice, Connecticut Hospice, in 1974. Ongoing meetings between hospice providers and hospice leaders evolved into the formation of the National Hospice Organization in 1978 (now called the National Hospice and Palliative Care Organization, or NHPCO). The first ''Standards of a Hospice Program of Care'' were published by National Hospice Organization in 1979. Even during the early stages of hospice development, hospice leaders were working with key legislative leaders to develop a system to reimburse hospice care in the United States.[9] However, it was evident that before governmental reimbursement could occur, data had to be collected and analyzed to demonstrate what hospices actually provided and what costs were involved in rendering hospice care. The Health Care Finance Administration (HCFA)—now known as the Centers for Medicare & Medicaid Services (CMS) conducted a national demonstration of 26 hospices throughout the country to study the effect of reimbursed hospice care. The results of this demonstration, as well as those sponsored by the private health insurance sector and private foundations, and along with the testimony of multiple hospice industry leaders, legislators and hospice families, helped to form the structure of the Medicare Hospice Benefit.

During Congressional committee hearings regarding the development of a Medicare hospice benefit, testimony by Paul Willging, deputy administrator of HCFA, expressed caution about embracing benefit expansions that could lead to unexpected consequences and said that HCFA ''must clearly define what we would pay for and to whom, in order to meet our responsibilities to patients, providers and the taxpayers.'' [10] Other stakeholders agreed that a Medicare hospice benefit needed to be structured to promote an optimum movement from a point of view of controlling costs and offering the most appropriate means of service without the development of a system that focused on just getting maximum reimbursement from Medicare.

[7] Story, P., Knight, C. (2004). *The Hospice/ Palliative Medicine Approach to End-of-Life Care,* 2nd ed. UNIPAC One.

[8] Cefalu, C., Ruiz, M. (2011). *The Medicare Hospice Benefit: A Changing Philosophy of Care?* Annals of Long Term Care: Clinical Care and Aging. 19 (1); 43–48.

[9] Connor, S. (2007). *Development of Hospice and Palliative Care in the United States.* OMEGA. 56 (1); 89–99.

[10] Testimony by Paul Willging, deputy administrator of HCFA, to the Subcommittee on Health of the Committee of Ways and Means, House of Representatives, March 25, 1982.

Stakeholders also agreed that unique characteristics of hospice care should be maintained. The goal was not to have the Federal government provide total support to hospice programs; rather, legislation would be enacted that would supplement the continued support of the local community, private sector and other resources which allow hospices to maintain their unique identity, spirit of volunteerism and altruistic focus.[11] The National Hospice Organization president, Dr. Edwin Olsen, testified at the March 25, 1982 Congressional hearing that, at that time, most American hospices were community charities by design and intent, and that hospice offered an integrated service. Hospices functioned not as an add-on, but as a comprehensive alternative to the typical ways of caring for the terminally ill and their families. The hospice industry, as discussed in Dr. Olsen's testimony, was very clear that their goal was to maintain that alternative service for those who were approaching end-of-life.

Hospice industry leaders also expressed the importance of hospice program accountability. Hospices would be accountable for and be able to control the quality and delivery of patients admitted for hospice care, instead of having to ''broker'' the patients out to other providers for reimbursement and convenience.[12] Hospice advocates stressed the importance of maintaining continuous clinical control over all aspects of care to ensure a successful hospice program and framers of the benefit recognized this fact by requiring professional management responsibility.[13] Although there were ongoing concerns by HCFA, the Congress, and the hospice industry about the potential misuse of a new hospice benefit,[14] [15] Section 122 of the Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982 (Pub. L. 97–248, enacted on September 3, 1982) expanded the scope of Medicare benefits by authorizing coverage for hospice care for terminally ill beneficiaries.

2. Legislative History of the Medicare Hospice Benefit

After Medicare coverage of hospice care was authorized by the Congress, the General Accounting Office (now Government Accountability Office, or GAO) summarized the legislative intent of the Medicare hospice benefit in a July 13, 1983 letter. In this letter, the GAO acknowledged that there was no standard definition of what a hospice was or what services an organization must provide to be considered a hospice. However, the GAO stated that it was generally agreed that the hospice concept in the United States is a program of care in which an organized interdisciplinary team systematically provides palliative care (relief of pain and other symptoms) and supportive services to patients with terminal illnesses.[16] This letter further states that the hospice objective is to make a patient's remaining days as comfortable and meaningful as possible and to help the family cope with the stress by making the necessary adjustments to the changes in the patient's illness and death. The GAO letter also reiterates that hospices must directly provide certain core services including nursing care, physician services and counseling services and must either directly, or through arrangements, provide physical therapy, occupational therapy, speech-language pathology, home hospice aides, homemaker services, drugs, medical supplies and appliances and short-term inpatient care. The letter concluded by stating that the Congress would continue to monitor the effectiveness of the hospice demonstration program, which was ongoing at the time of enactment, the equity of the reimbursement system, method and benefit structure put into effect under the hospice provision, including the feasibility and advisability of a prospective reimbursement system for hospice care and other aspects of the hospice program.[17]

Further description of the Medicare hospice benefit design was provided in a report prepared by the Congressional staff for the Senate Committee on Finance on September 9, 1983. In this report, four basic principles were presented, which according to hospice advocates, distinguish hospice care from the traditional health care system:

1. The patient and his/her family are considered the unit of care.

2. A multidisciplinary team is used to assess the physical, psychological and spiritual needs of the patient and family to develop an overall plan of care and to provide coordinated care.

3. Pain and collateral symptoms associated with the terminal illness and previous treatments are controlled, but no heroic efforts are made to cure the patient.

4. Bereavement follow-up is provided to help the family cope with their emotional suffering.[18]

It was also noted that the statute provides that an individual, upon making an election to receive hospice coverage, would be deemed to have waived payments for certain other benefits in addition to choosing a palliative mode of treatment, except in ''exceptional and unusual circumstances'' as the Secretary may provide (section 1812(d)(2)(A) of the Act). Furthermore, the hospice plan of care must include assessment of the individual's needs and identification of the services to meet those needs including the management of discomfort and symptom relief.

Several Senators testified at a September 15, 1983 Hearing before the Subcommittee on Health of the Committee on Finance regarding ongoing concerns with the new Medicare hospice benefit. These Senators made it clear that the new healthcare delivery system—hospice—was to offer an alternative to institutionalized care for the terminally ill. Concerns were expressed over the possibility that ''store front'' hospices would crop up as a result of Medicare reimbursement being made available for this service. The Senators stated that they wanted to maintain flexibility within the benefit without creating incentives for fraud and abuse.[19] Similarly, industry advocates were also concerned that availability of Medicare reimbursement would attract interest from those simply interested in a new source of revenue. The hospice industry agreed that the Medicare hospice benefit was created, not as a new revenue source for providers, but as a benefit

[11] Testimony by Congressman Leon Panetta, to the Subcommittee on Health of the Committee of Ways and Means, House of Representatives, March 25, 1982.

[12] Written testimony by Dr. Edwin J. Olsen, director of the National Hospice Organization, to the Subcommittee on Health of the Committee of Ways and Means, House of Representatives, March 25, 1982.

[13] Health Care Financing Administration, Office of Research and Demonstrations. September, 1987. ''Medicare Hospice Benefit Program Evaluation.'' Health Care Financing Extramural Report. HCFA Pub. No. 03248.

[14] Testimony by Paul Willging, deputy administrator of HCFA, to the Subcommittee on Health of the Committee of Ways and Means, House of Representatives, March 25, 1982.

[15] Comments by Congressman Bill Gradison, at the Hearing before the Subcommittee on Health of the Committee of Ways and Means, House of Representatives, March 25, 1982.

[16] ''Hospice Care-A Growing Concept in the United States.'' (HRD–79–50), March 6, 1979.

[17] GAO Letter, ''Comments on the Legislative Intent of Medicare's Hospice Care Benefit,'' GAO–HRD–83–72, July 12, 1983.

[18] ''Background Materials on Medicare Hospice Benefit Including Description of Proposed Implementing Regulations,'' September 9, 1983. Committee on Finance, United States Senate, 24–525 0.

[19] Testimony by Senators George Mitchell and Roger W. Jepsen. Testimony before the Subcommittee on Health of the Committee on Finance, United States Senate, September 15, 1983.

choice for patients and their families.[20] Terminally ill Medicare beneficiaries could decide not to elect hospice care and they would continue to be able to receive all other Medicare services available, such as home health services that include skilled nursing and home health aide care, inpatient hospital services, supplies, medications, and DME. For example, in response to recent home health rulemaking we received anecdotal comments that some home health agencies commented that they are providing palliative care to homebound terminally ill individuals who have not elected the hospice benefit. In those instances, the patient is receiving home health aide services, nursing care, and supplies needed under the home health benefit and the DME and medications that the patient needs are still covered under Medicare Parts B and D. However, we note that, with the exception of home health, these services typically have associated co-payments and would be rendered through various different providers or suppliers, perhaps with a lack of continuity and coordination that would be provided under the Medicare hospice benefit. Under the Medicare hospice benefit, the hospice-eligible individual would receive all of those services, and more, with the hospice provider assuming the clinical and professional responsibility of coordinating all of the necessary care and services without the beneficiary assuming responsibility for the associated cost sharing required outside of the hospice benefit.

3. Hospice Care Today

The Medicare hospice benefit was a unique addition to the U.S. health care system. Prior to the implementation of the Medicare hospice benefit, the government reimbursed providers based on the cost of delivering care. Reimbursement under the Medicare hospice benefit is a fixed, per day, per level of care prospective payment structure. By creating a fixed payment for hospice care, the provider is at risk for costs that exceed the payment amount; and, if the fixed payment exceeds the cost of care, the hospice is allowed to keep the gain. Under the Medicare hospice benefit, the provider has clinical flexibility in how hospices can render care to best meet the needs of the individual patient and his or her family. This is viewed as a joint partnership between the providers of care and the federal government to provide services and the financial payment for those services for those who are dying. Hospice advocates, during the development of the benefit, welcomed this type of reimbursement structure for the flexibility it afforded in providing individualized hospice services [21]. The hospice industry continues to recognize that the Medicare hospice benefit has always been a risk-based clinical and economic model of care stating that the fixed reimbursement model means ''a fixed sum for all-inclusive end of life care.'' [22] Similar to the more recent medical home model for primary care, hospice has always been patient-centered, comprehensive, team-based, coordinated, accessible, focused on quality and safety, and extends throughout the continuum of care.

Throughout the development of the Medicare hospice benefit, experts in the hospice field believed that the success or failure of hospice, under Medicare, would depend on the hospice plan of care, appropriate implementation of the plan of care, and the hospice team sharing the same philosophy of patient-centered, comprehensive, and holistic care.[23] A coordinated, collaborative approach to each and every hospice patient and his or her family was considered to be the most important component of the success of the Medicare hospice benefit.[24] During the development of the Medicare hospice benefit, there were concerns by both the Congress and the hospice industry regarding the potential for fraud and abuse by some providers resulting from the enactment of a Medicare hospice benefit.[25] One drafter of the legislation expressed that he wanted to maintain benefit flexibility by allowing hospices to render individualized care, promoting access to needed services, and providing high quality care while maintaining fiscal integrity of the Medicare Trust Funds.[26] This was a benefit founded in trust—trust that hospices would provide the comprehensive care and services promised during the benefit development and trust that Medicare would be a partner in helping to share the costs.[27] It was very clear throughout the development, and years after the implementation of the Medicare hospice benefit, that hospices were expected to make good on their promise to do a better job than conventional Medicare services for those who were at end-of-life.[28] Deliberately, the law made no provision for discharging a hospice patient except under very limited circumstances and only after making attempts to rectify those circumstances.[29] This meant that once a beneficiary elected hospice and was under one of the three 60-day election periods, a hospice could not just discharge a patient for the sake of cost or convenience. Currently, there are two 90-day election periods and unlimited 60-day election periods, as long as the beneficiary continues to meet eligibility criteria. However, hospices are still limited in the reasons for discharge, and still cannot discharge a hospice beneficiary for cost or convenience. Our regulations at section 418.26(a) state the reasons a hospice can discharge a beneficiary from hospice services.

Since the implementation of the Medicare hospice benefit, hospice utilization continues to grow. More Medicare beneficiaries are becoming aware and educated of the benefits of hospice care. In recent years, the percentage of Medicare deaths for patients under a hospice election has increased from 20 percent in 2000 to 44 percent in 2012. Total expenditures have increased from over $9.2 billion in 2006 to over $15.1 billion in 2013. This observed growth far outpaces the annual market basket increases and it not solely reflective of an increase in utilization. We note that average spending per

[20] Position paper submitted by Donald J. Gaetz, president, National Hospice Organization. ''Subcontracting for Nursing Services under the Medicare Hospice Benefit.'' Testimony before the Subcommittee on Health of the Committee on Finance, United States Senate, September 15, 1983.

[21] Testimony by Dr. Daniel Hadlock, Hospice, Inc, before the Select Committee on Aging. House of Representatives, May 25, 1983.

[22] ''NHPCO Comments on Washington Post Article'', Retrieved on December 27, 2013. *http://www.nhpco.org/press-room/press-releases/nhpco-responds-washington-post*

[23] Cefalau, C., Ruiz, M. The Medicare Hospice Benefit: A Changing Philosophy of Care? Annals of Long-Term Care: Clinical Care and Aging. 2011; 19(1): 43–48.

[24] Cefalau, C., Ruiz, M. The Medicare Hospice Benefit: A Changing Philosophy of Care? Annals of Long-Term Care: Clinical Care and Aging. 2011; 19(1): 43–48.

[25] Comments by Congressman Bill Gradison, at the Hearing before the Subcommittee on Health of the Committee of Ways and Means, House of Representatives, March 25, 1982; Testimony by Rosemary Johnson-Hurzeler, CEO, The Connecticut Hospice, Testimony before the Subcommittee on Health of the Committee on Finance, United States Senate, September 15, 1983; Testimony by Margaret Cushman, MSN, RN, Chairman of Governmental Affairs, National Association of Home Health and Hospice Care (NAHC) before the Subcommittee on Health of the Committee on Finance, United States Senate, September 15, 1983.

[26] Comments by Congressman Bill Gradison, at the Hearing before the Subcommittee on Health of the Committee of Ways and Means, House of Representatives, March 25, 1982.

[27] Testimony by Congressman Leon Panetta, to the Subcommittee on Health of the Committee of Ways and Means, House of Representatives, March 25, 1982.

[28] Hoyer, T. (1998). A History of the Medicare Hospice Benefit. The Hospice Journal, 13(1–2), 61–69.

[29] Hoyer, T. (1998). A History of the Medicare Hospice Benefit. The Hospice Journal, 13(1–2), 61–69.

beneficiary has increased substantially between 2006 and 2013 from approximately $9,833 in 2006 to $11,458 in 2013.[30]

Section 3132(a) of the Affordable Care Act provides statutory authority for CMS to reform the hospice payment system no earlier than October 1, 2013. We presented data in the FY 2014 Hospice Wage Index and Payment Rate Update Final Rule, regarding diagnosis reporting on hospice claims and opioids paid under Part D for beneficiaries in a hospice election (78 FR 48234). Recent analysis of other Part A, Part B and Part D spending in 2012 (including beneficiary cost-sharing payments of $135.5 million for Parts A and B and $48.2 million for Part D) shows that there was an additional $1 billion in total Medicare spending during a hospice election (see section III.A.4). This includes Part A payments for inpatient hospitalizations and SNF stays, as well as Part B payments for outpatient and physician services, diagnostic tests and imagining, and ambulance transports, to name just a few. There is concern that many of these services should have been provided under the Medicare hospice benefit as they very likely were for services related to the terminal illness and related conditions. This strongly suggests that hospice services are being ''unbundled'', negating the hospice philosophy of comprehensive, holistic care and shifting the costs to other parts of Medicare, and creating additional cost-sharing burden to those vulnerable Medicare beneficiaries who are at end-of-life. Duplicative payments for hospice-covered services also threaten the program integrity and fiscal viability of the hospice benefit.

Reports by both the Medicare Payment Advisory Committee (MedPAC) and the Office of the Inspector General (OIG) expressed similar concerns regarding the unbundling of services meant to be covered under the hospice per diem, capitated payment system. Similar to the analysis presented above, MedPAC also analyzed non-hospice utilization and spending patterns through Parts A, B and D for Medicare hospice beneficiaries. MedPAC also concluded that over $1 billion FFS spending was attributed to providing services reported as unrelated to the terminal conditions of hospice enrollees. MedPAC went on to state that 58 percent of Medicare hospice enrollees received a service or drug outside of the hospice benefit over the course of a hospice episode. The highest shares of spending were on drugs and inpatient services.[31] In addition, the OIG reported in June of 2012 that Medicare could be paying twice for prescription drugs for beneficiaries receiving services under the Medicare hospice benefit and recommended that CMS increase its oversight to make sure that Part D is not paying for medications already included in the Medicare hospice per diem payment rates.[32] As a result of the OIG report, the CMS' Center for Program Integrity (CPI) began recoupment efforts for analgesics from Part D plan sponsors.

Ongoing Part D memo guidance has also been issued to clarify existing coverage and payment policies. The most recent Part D guidance was provided in the March 10, 2014 memorandum entitled, 'Part D Payment for Drugs for Beneficiaries Enrolled in Hospice—Final 2014 Guidance' (*http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/Hospice/Downloads/Part-D-Payment-Hospice-Final-2014-Guidance.pdf*) In addition, this rule solicits comments on processes that could be developed to address the inappropriate Part D reimbursement for medications that should be covered under the Medicare hospice per diem (see Section III.I). The purpose of these Part D guidance memos, in response to OIG reports of possible duplication of payment for drugs under the hospice per diem and Part D plans, was to outline the expectations regarding coordination of benefits and coverage responsibility between Part D plan sponsors and hospices. The ongoing concern is that hospices are not providing the broad range of medications required by hospice beneficiaries during a hospice election, especially for those drugs classified as analgesics, antianxiolytic, antiemetics and laxatives (generally considered essential medications for palliation in a hospice population).[33] Comments received, regarding this memo guidance, highlighted that there are multiple interpretations as to the meaning of what are considered ''related conditions.'' Additionally, it was noted in these comments that the terms, ''terminal illness'', ''terminal diagnosis'', ''qualifying terminal diagnosis'', and ''terminal prognosis'' were used interchangeably and with varying interpretations as to their meanings.

We believe summary of the ''Development of the Hospice Benefit'' and the ''Legislative history of the Medicare Hospice Benefit'' clearly captures the expectation that hospices are to provide holistic and comprehensive services under the Medicare hospice benefit. As stated in the 1983 proposed and final rules, and reiterated in the FY 2014 Hospice Wage Index and Rate Update proposed and final rules: ''It is our general view that the waiver required by law is a broad one and that hospices are required to provide virtually all of the care that is needed by terminally ill patients'' (48 FR 56010). Our expectation continues to be that hospices offer and provide comprehensive, virtually all-inclusive care, and in a better, more humane way, than is available in other healthcare settings. In order to preserve the Medicare hospice benefit and ensure that Medicare beneficiaries continue to have access to comprehensive, high-quality and appropriate end-of-life hospice care, we will continue to examine program vulnerabilities and implement appropriate safeguards in the Medicare hospice benefit, when appropriate.

4. Definition of ''Terminal Illness''

Since the implementation of the Medicare hospice benefit, we have defined a ''terminally ill'' individual to mean ''that the individual has a medical prognosis that his or her life expectancy is 6 months or less if the illness runs its normal course'' (§ 418.3). We have always interpreted ''terminally ill'' to mean a time frame of life expectancy and expect that the individual's whole condition plays a role in that prognosis. Comments received in response to prior years' proposed rules state that longstanding, preexisting conditions should not be considered related to a patient's terminal illness or related conditions and that chronic, stable conditions play little to no role in a patient's terminal illness or related conditions. Commenters also stated that controlled pain and symptoms are not considered to be related to a patient's terminal illness or related conditions, that not all pain is related to the terminal illness and related conditions, and that comorbidities and the maintenance of comorbidities are not related to a patient's terminal illness or related conditions. These commenters believed these types of conditions

[30] Calendar year 2013 expenditures and average spending per beneficiary were calculated using hospice claims data from the Chronic Conditions Data Warehouse (CCW), accessed on February 27, 2014.

[31] MedPAC, ''Assessing payment adequacy and updating payments: hospice services'', December 13 2013. Available at: *http://www.medpac.gov/transcripts/hospice_December2013_Public.pdf.*

[32] Office of the Inspector General, Department of Health and Human Services. Medicare Could be Paying Twice for Prescription Drugs for Beneficiaries in Hospice. June, 2012. A–06–10–00059.

[33] World Health Organization. (January, 2013). Essential Medications in Palliative Care.

should not be included in the bundle of services covered under the Medicare hospice benefit. As previously stated in response to those comments, we believe that these conditions are included in the bundle of covered hospice services. The original implementing regulations of the Medicare hospice benefit, beginning with the 1983 Hospice proposed and final rules (48 FR 38146 and 48 FR 56008), articulates a set of requirements that do not delineate between pre-existing, chronic, nor controlled conditions. In order to be eligible to receive hospice services under the Medicare hospice benefit, the individual must be entitled to Part A and must be certified as being terminally ill, meaning that his or her medical prognosis is a life expectancy of 6 months or less if the illness runs its normal course. We have recognized throughout the federal regulations at § 418 that the total person is to be assessed, including acute and chronic conditions, as well as controlled and uncontrolled conditions, in determining an individual's terminal prognosis. All body systems are interrelated; all conditions, active or not, have the potential to affect the total individual. The presence of comorbidities is recognized as potentially contributing to the overall status of an individual and should be considered when determining the terminal prognosis. NHPCO defines ''comorbidity,'' as: ''known factors or pathological disease impacting on the primary health problem and generally attributed to increased risk for poor health status outcomes.'' [34]

We have defined palliative care—the nature of the care provided under the hospice benefit—in our regulations at § 418.3 to mean: ''Patient and family-centered care that optimizes quality of life by anticipating, preventing and treating suffering. Palliative care throughout the continuum of illness involves addressing physical, intellectual, emotional, social and spiritual needs and to facilitate patient autonomy, access to information and choice.'' Note that, in this definition, palliative care is to anticipate and prevent, as well as treat, suffering. This means that hospices are to be proactive in their care approach and not just reactive to pain and symptoms after they arise.

Because hospice care is unique in its comprehensive, holistic, and palliative philosophy and practice, we want to ensure that the hospice services under the Medicare hospice benefit are preserved and not diluted, or unbundled in any way. For context, the definition of illness means ''an abnormal process in which aspects of the social, physical, emotional, or intellectual condition and function of a person are diminished or impaired compared with that person's previous condition''.[35] An intensive review of the history of hospice, hospice philosophy and legislative actions described above provided the basis for discussion among several CMS clinical leaders across several agency components as to the meaning of ''terminal illness'' within the context of the Medicare hospice benefit. After a review of all of the history listed above, the clinical collaborative effort across CMS solicits comments on defining ''terminal illness'' to mean: ''Abnormal and advancing physical, emotional, social and/or intellectual processes which diminish and/or impair the individual's condition such that there is an unfavorable prognosis and no reasonable expectation of a cure; not limited to any one diagnosis or multiple diagnoses, but rather it can be the collective state of diseases and/or injuries affecting multiple facets of the whole person, are causing progressive impairment of body systems, and there is a prognosis of a life expectancy of six months or less''.

We are soliciting comments on this definition for further discussion and consideration for potential future rulemaking.

5. Definition of ''Related Conditions''

Section 1812(d)(2) of the Act provides that an individual, upon making an election to receive hospice coverage, would be deemed to have waived payments for certain other benefits except in ''exceptional and unusual circumstances as the Secretary may provide.'' Comments received on the 1983 Hospice proposed rule specifically asked for further CMS clarification regarding the concept of ''related conditions.'' Specifically, the commenters suggested a more detailed definition of what constitutes care for a patient's terminal illness or related conditions (which is the responsibility of the hospice) and what constitutes care for unrelated conditions (for which out-of-hospice Medicare payment may be made) (48 FR 56010). Our response was: ''. . . we have not received any suggestions for identifying 'exceptional or unusual' circumstances that warranted the inclusion of a specific provision in the regulations to accommodate them. Most of the comments that were made attempted to suggest this exception as a means of routinely providing non-hospice Medicare financing for the expense of costly services needed by hospice patients, and we do not view this as an appropriate interpretation of the law'' (48 FR 56011). The law allows for circumstances in which services needed by a hospice beneficiary would be completely unrelated to the terminal illness and related conditions, but we believe that this situation would be the rare exception rather than the norm. We reiterated this position in the FY 2014 Hospice Wage Index and Rate Update proposed rule (78 FR 27826) as a reminder of the expectation of the holistic nature of hospice services that shall be provided under the hospice benefit, as well as to remind hospices about diagnosis reporting on hospice claims.

Therefore, in keeping with the tenets of hospice philosophy described in this section, the intent of the Medicare hospice benefit, expectations of comprehensive care, and in response to previous and ongoing stakeholder comments, the CMS clinical collaborative effort solicits comments on defining ''related conditions'' to mean: ''Those conditions that result directly from terminal illness; and/or result from the treatment or medication management of terminal illness; and/or which interact or potentially interact with terminal illness; and/or which are contributory to the symptom burden of the terminally ill individual; and/or are conditions which are contributory to the prognosis that the individual has a life expectancy of 6 months or less''.

We solicit comments on this definition for further discussion and consideration for potential future rulemaking.

C. Guidance on Determining Beneficiaries' Eligibility for Hospice

An individual must be certified by the hospice medical director and the individual's attending physician (if designated by the individual) as being terminally ill, meaning that the individual has a medical prognosis of a life expectancy of 6 months or less in order to receive the Medicare hospice benefit. However, we also have recognized the challenges in prognostication. It has always been our expectation that the certifying physicians will use their best clinical judgment, based on the initial and updated comprehensive assessments and collaboration with the hospice interdisciplinary group (IDG) to

[34] National Hospice and Palliative Care Organization: ''Standards of Practices for Hospice Programs'', 2010. Retrieved on February 20, 2014 from: *http://www.nhpco.org/nhpco-standards-practice.*

[35] Mosby's Medical Dictionary, 8th edition, 2009, Elsevier.

determine if the individual has a life expectancy of six months or less with each certification and recertification. As stated in previous rules, in reaching a decision to certify that the patient is terminally ill, the hospice medical director must consider at least the following information per our regulations at § 418.25 (b):

- Diagnosis of the terminal condition of the patient.
- Other health conditions, whether related or unrelated to the terminal condition.
- Current clinically relevant information supporting all diagnoses.

We do recognize that making a prognosis is not an exact science. Section 322 of the Benefits Improvement and Protection Act of 2000 (BIPA) (Pub. L. 106–554) amended section 1814(a) of the Act by clarifying that the certification of an individual who elects hospice ''shall be based on the physician's or medical director's clinical judgment regarding the normal course of the individual's illness.'' The amendment clarified that the certification is based on a clinical judgment regarding the usual course of a terminal illness, and recognizes the fact that making medical prognostications regarding life expectancy are not exact. However, the amendment regarding the physician's clinical judgment does not negate the fact that there must be a clinical basis for a certification. A hospice is required to make certain that the physician's clinical judgment can be supported by clinical information and other documentation that provide a basis for the certification of 6 months or less if the illness runs its normal course.

While the expectation remains that the hospice physician will determine a beneficiary's eligibility for hospice, this is not to say that this decision cannot be reviewed if there is a question as to whether the clinical documentation supports or does not support a patient's hospice eligibility as hospice services provided must be reasonable and necessary for the palliation and management of the terminal illness and related conditions. The goal of any review for eligibility is to ensure that hospices are thoughtful in their eligibility determinations so that hospice beneficiaries are able to access their benefits appropriately. CMS' right to review clinical documentation that supports physician certifications has been established in federal court and by the agency in an administrative ruling. (See, for example, HCFA Ruling, 93–1 *Weight to be Given to a Treating Physician's Opinion in Determining Medicare Coverage of Inpatient Care in a Hospital or Skilled Nursing Facility* (May 18, 1993); *Maximum Comfort, Inc* v. *Leavitt* (512 F.3d 1081 (9th Cir. 2007); *MacKenzie Medical Supply* v. *Leavitt* (506 F.3d 341 (4th Cir. 2007))). In order to be covered under Medicare Part A, the care must also be reasonable and necessary. There has always been a statutory prohibition (section 1862 (a)(1)(C) of the Act) against payment under the Medicare program for services which are not reasonable and necessary for the palliation or management of terminal illness. Additionally, section 1869(a)(1) of the Act makes clear that the Secretary makes determinations concerning entitlement, coverage and payment of benefits under part A and part B of Medicare.

We are reminding providers that there are multiple public sources available to assist in determining whether a patient meets Medicare hospice eligibility criteria (that is, industry-specific clinical and functional assessment tools and information on MAC Web sites). Additionally, we expect that hospices will use their expert clinical judgment in determining eligibility for hospice services. We expect that documentation supporting a 6-month or less life expectancy is included in the beneficiary's medical record and available to the MACs when requested.

If a beneficiary improves and/or stabilizes sufficiently over time while in hospice such that he/she no longer has a prognosis of 6 months or less from the most recent recertification evaluation or definitive interim evaluation, that beneficiary should be considered for discharge from the Medicare hospice benefit. Such beneficiaries can be re-enrolled for a new benefit period when a decline in their clinical status is such that their life expectancy is again 6 months or less. On the other hand, beneficiaries in the terminal stage of their illness that originally qualify for the Medicare hospice benefit but stabilize or improve while receiving hospice care, yet have a reasonable expectation of continued decline for a life expectancy of less than 6 months, remain eligible for hospice care. The hospice medical director must assess and evaluate the full clinical picture of the Medicare hospice beneficiary to make the determination whether the beneficiary still has a medical prognosis of 6 months or less, regardless of whether the beneficiary has stabilized or improved. There are prognostication tools available for hospices to assist in thoughtful evaluation of Medicare beneficiaries for terminally ill eligibility for the Medicare hospice benefit. We expect hospice providers to use the full range of tools available, including guidelines, comprehensive assessments, and the complete medical record, as necessary, to make responsible and thoughtful determinations regarding terminally ill eligibility. We have always acknowledged the uniqueness of every Medicare beneficiary and support thorough and thoughtful evaluation in determining whether beneficiaries meet the eligibility criteria of being certified as terminally ill. We continue to support the concept of shared decision-making, patient choice and the right care at the right time to allow Medicare beneficiaries full and appropriate access to their Medicare benefits, including hospice care. Furthermore, Medicare hospice beneficiaries have certain guaranteed rights. If the hospice or designated attending physician believes that the hospice beneficiary is no longer eligible for hospice care because his or her condition has improved, and the beneficiary does not agree with that determination, the hospice beneficiary has the right to ask for a review of his or her case. The hospice should provide the hospice beneficiary with a notice that explains his or her right to an expedited review by a contracted independent reviewer hired by Medicare, called a Quality Improvement Organization (QIO). If the hospice beneficiary asks for this appeal, the QIO will determine if hospice services should continue. The QIO will determine if the beneficiary still needs hospice services. The provider is expected to continue to provide services for the patient following a favorable decision by a QIO. In the QIO decision, the QIO should advise the provider as to why it disagrees with the hospice, which should help the provider to re-evaluate the discharge decision. If at another point in time following the resumption of covered services the hospice believes that the patient is no longer hospice eligible, the provider should timely deliver a CMS–10123 to notify the patent of its decision to discharge. The patient could again appeal to the QIO. Medicare beneficiaries have the right to be included in decisions about their care, the right to a fair process to appeal decisions about payment of services, and the right to privacy and confidentiality.

D. Proposed Timeframe for Hospice Cap Determinations and Overpayment Remittances

As described in sections 1861(dd)(2)(A)(iii) and 1814(i)(2)(A) through (C) of the Act, when the Medicare hospice benefit was implemented, the Congress included 2 limits on payments to hospices: An

inpatient cap and an aggregate cap. The hospice inpatient cap limits the total number of Medicare inpatient days to no more than 20 percent of a hospice's total Medicare hospice days. The intent of the inpatient cap was to ensure that hospice remained a home-based benefit. The hospice aggregate cap limits the total aggregate payment any individual hospice can receive in a year. The intent of the hospice aggregate cap was to protect Medicare from spending more for hospice care than it would for conventional care at the end of life.

The aggregate cap amount was set at $6,500 per beneficiary when first enacted in 1983; this was an amount hospice advocates agreed was well above the average cost of caring for a hospice patient.[36] The $6,500 amount is adjusted annually by the change in the medical care expenditure category of the consumer price index for urban consumers from March 1984 to March of the cap year. For the 2013 cap year, the cap amount was $26,157.50 per beneficiary. The cap year is defined as the period from November 1st to October 31st, and was set in place in the December 16, 1983 hospice final rule (48 FR 56022).

The cap amount is multiplied by the number of Medicare beneficiaries who received hospice care from a particular hospice during the year, resulting in its hospice aggregate cap, which is the allowable amount of total Medicare payments that hospice can receive for that cap year. There are two different methods for counting a hospice's beneficiaries: The streamlined and the patient-by-patient proportional methods. Which method a hospice can use to count beneficiaries depends on a number of factors, as described in our regulations at § 418.309 and in section 90.2.3 of the hospice Benefit Policy Manual (IOM 100–02, chapter 9, available at *http://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/bp102c09.pdf*). A hospice's total Medicare payments for the cap year cannot exceed the hospice's aggregate cap. If its aggregate cap is exceeded, then the hospice must repay the excess back to Medicare.

While hospices rarely exceed the inpatient cap, in its March 2012 Report to the Congress, MedPAC reported that an increasing number of hospices are exceeding the aggregate cap. MedPAC also noted that above-cap hospices were almost all for-profit with very long lengths of stay, high live discharge rates, and very high profit margins before the return of cap overpayments.[37] The percentage of hospices exceeding the aggregate cap rose from 2.6 percent in 2002 to a peak of 12.5 percent in 2009. In 2010, the percentage of hospices exceeding the aggregate cap decreased to 10.1 percent.[38]

Abt Associates, our hospice reform contractor, also performed analysis on the number of hospices exceeding the aggregate cap with results similar to MedPAC's, where an increasing percentage of hospices exceeded their caps from 2006 (9.1 percent) to a peak in 2009 (12.8 percent), followed by a decline through 2011 (10.5 percent). However, the analysis shows an increase in 2012, with 11.6 percent of hospices exceeding their aggregate caps. Additionally, analysis of above-cap hospices showed that the average overpayment per beneficiary has increased over time, up 35.2 percent from 2006 ($7,384) to 2012 ($9,983). Using above-cap hospices, we also found that the average overpayment amount went from $732,103 in 2006 to $440,727 in 2011, but that this downward trend is estimated to change in 2012, when the average overpayment amount is estimated to increase to $547,011.

We also compared hospices' year-end percentage of their aggregate cap total that they had received in Medicare payments over time. Specifically, we examined where hospices ended their cap year in terms of Medicare reimbursements received, relative to that year's aggregate cap limit, by comparing the 2006 cap year to the 2012 cap year. Analysis revealed that more hospices ended the 2012 cap year ''just below'' their aggregate cap than in 2006. The cap analyses which are referenced in this section are available in the May 2014 Technical Report which will be posted in May, 2014 on our Hospice Center Web page at: *http://www.cms.gov/Center/Provider-Type/Hospice-Center.html.*

The results from these recent analyses on the hospice aggregate cap highlight the importance of hospices monitoring their aggregate cap and ensuring that the beneficiaries under their care are truly eligible for hospice services. In the FY 2010 hospice wage index proposed rule we solicited comments on the aggregate hospice cap (74 FR 18920–18922). Many commenters wanted more timely notification of cap overpayments. Many also requested that hospices be given access to beneficiaries' full hospice utilization history, as having this information would enable hospices to better manage their aggregate cap. In response to concerns from hospices, we redesigned the Provider Statistical and Reimbursement (PS&R) system in 2011, so that hospices can now easily manage their inpatient and aggregate caps. The redesigned PS&R enables hospices to calculate estimated caps to monitor their cap status at different points during the cap year, and also enables them to calculate their caps after the cap year ends.

Our current practice is for the Medicare Administrative Contractors (MACs) to complete the hospice cap determinations for both the inpatient and the aggregate caps 16 to 24 months after the cap year in order to demand any overpayment. We are concerned about this long timeframe, particularly given that the percentage of hospices exceeding the aggregate cap is increasing, along with the average overpayment per beneficiary. To better safeguard the Medicare Trust Fund, we believe that demands for cap overpayments should occur sooner. This is now possible due to the redesigned PS&R system.

Therefore, for the 2014 cap year and subsequent cap years, we propose to amend § 418.308 and require that hospices complete their inpatient and aggregate caps determination within 5 months after the cap year ends (that is, by March 31) and remit any overpayments at that time. We propose that the MACs would then reconcile all payments at the final cap determination. If a provider fails to file its inpatient and aggregate cap determination 150 days after the end of the cap year, we propose that payments to the provider would be suspended in whole or in part until the self-determined cap is filed with the Medicare contractor. We propose to further amend § 418.308 and § 405.371 to state that payments to a hospice would be suspended in whole or in part, for failure to file a self-determined inpatient and aggregate cap determination. This is similar to the current practice followed by all other provider types that file cost reports with MACs.

Hospices would be provided a pro-forma spreadsheet that they would use to calculate their caps to remit any overpayments. The redesigned PS&R system provides the inpatient days, total days, beneficiary counts, and Medicare payments that are needed to calculate any inpatient or aggregate cap overpayments. The redesigned system can provide needed data whether a

[36] National Hospice and Palliative Care Organization (NHPCO), ''A Short History of the Medicare Hospice Cap on Total Expenditures.'' Retrieved on February 19, 2014 at: *http://www.nhpco.org/sites/default/files/public/regulatory/History_of_Hospice_Cap.pdf.*

[37] MedPAC, ''Report to Congress: Medicare Payment Policy'', March 2012, pp. 293–295, 302.

[38] MedPAC, ''Report to Congress: Medicare Payment Policy'', March 2013, p. 276.

hospice uses the streamlined method or the patient-by-patient proportional method for its aggregate cap calculation. All hospices are required to register in Individuals Authorized Access to CMS Computer Services (IACS) and obtain their PS&R report from the PS&R system. Hospices experiencing difficulties can request a copy of their PS&R report from their MAC.

We invite comment on this proposal and the associated change in the regulation at § 418.308 in section VI.

E. Proposed Timeframes for Filing the Notice of Election and Notice of Termination/Revocation

1. Proposed Timeframe for Filing the Notice of Election

A distinctive characteristic of the Medicare hospice benefit is that it requires patients (or their representative) to intentionally choose hospice care through an election. As part of that election, patients (or their representative) acknowledge that they fully understand the palliative, rather than curative, nature of hospice care. Another important aspect of the election is a waiver of beneficiary rights to Medicare payment for any Medicare services related to the terminal illness and related conditions during a hospice election except when provided by, or under arrangement by, the designated hospice, or by the individual's attending physician if he/she is not employed by the designated hospice (§ 418.24(d)).

Because of this waiver, providers other than the designated hospice or attending physician cannot receive payment for services to a hospice beneficiary unless those services are unrelated to the terminal illness and related conditions. For our claims processing system to properly enforce this waiver, it is necessary that the hospice election be recorded in the claims processing system as soon as possible after the election occurs. A survey of the four Medicare hospice Medicare Administrative Contractors (MACs) revealed that 16.2 percent of NOEs are filed within 2 days of the effective date of election, 39.2 percent of NOEs are filed within 5 days of the effective date of election, and 62.1 percent of NOEs are filed within 10 days of the effective date of election. Prompt recording of the notice of election (NOE) prevents inappropriate payments, as claims filed by providers other than the hospice or the attending physician will be rejected by the system, unless those claims are for items or services unrelated to the hospice terminal illness. Prompt filing of the NOE also protects beneficiaries from financial liability from deductibles and copayments for items or services provided during a hospice election which are related to the terminal prognosis.

Once an NOE is filed, the hospice election and benefit period are established in the Common Working File (CWF) and in the Daily Transaction Reply Report (DTRR). The CWF is used by Part A and Part B providers, and the DTRR is used by Part D plan sponsors, to determine whether a beneficiary is a hospice patient. This information is necessary for providers and suppliers to properly handle claims for beneficiaries under a hospice election.

Our hospice reform contractor, Abt Associates, has performed analyses of Medicare expenditures for drugs and services provided to hospice beneficiaries during a hospice election. These analyses found that Medicare Part D was paying for many drugs which should have been provided by the hospice. We also found that Parts A and B were paying claims for items or services from non-hospice providers during a hospice election (See section III.A.4), though some of these claims may have been appropriate. Once a hospice election is established in the CWF, in order for claims from other providers to process, the claim must be from the attending physician and coded with a ''GV'' modifier, or for items or services unrelated to the terminal illness and related conditions and must be coded with either a condition code of ''07'' or a ''GW'' modifier. However, in calendar year 2012, 10,500 claims and 2.4 million line items, totaling $159 million were processed without the condition code or modifier. Approximately $100 million was from physician/supplier Part B claims that include claims from, for example, physicians, laboratories, and ambulance companies, and approximately $46 million was billed as durable medical equipment. This suggests that these claims may have been processed in the time between when the beneficiary elected hospice and when the hospice filed its NOE. When Parts A, B, or D pay claims for items or services during a hospice election, there is typically an associated beneficiary liability (such as deductibles or copayments). For example, in 2012 hospice beneficiary liability was $135.5 million for Part A or B claims, and $48.2 million for Part D claims, for items or services provided to hospice beneficiaries during a hospice election. We want to safeguard hospice beneficiaries from inappropriate financial liability during a hospice election for items or services that should be provided by the hospice. Please see section III.A.4 of this proposed rule and the May 2014 Technical Report, which will be posted on the CMS Hospice Center Web page in May, 2014 for more details on Medicare payments made to non-hospice providers during a hospice election for hospice beneficiaries. The hospice center Web page can be accessed at *http://www.cms.gov/Center/Provider-Type/Hospice-Center.html.*

In the April 1, 2013 CMS Part D Final Call Letter, it was noted that delays in the flow of hospice election information cause retroactive updates to the information sent to Part D plan sponsors on the DTRR, and plan sponsors requested that CMS improve the timeliness of the hospice data on the DTRR.[39] More recently, CMS issued a memorandum on December 6, 2013 entitled ''Part D Payment for Drugs for Beneficiaries Enrolled in Hospice,'' which sought to clarify the criteria for determining payment responsibility for drugs for hospice beneficiaries.[40] Industry commenters described the lag time in the notification of Part D plan sponsors that the beneficiary had elected hospice, revoked hospice, or been discharged alive from hospice as a key problem in determining payment responsibility. Commenters suggested that CMS require that the NOE be filed within a short timeframe of election (for example, within 48 hours).

The CWF is also used by hospices to identify the current benefit period, which helps hospices determine when a face-to-face encounter is required. We have received requests for assistance from hospices where a beneficiary was previously admitted to and then discharged from another hospice, which had not yet filed the NOE, creating a problem for the current hospice in determining the correct benefit period. This can lead to the current hospice not meeting the face-to-face requirement. Additionally, because of sequential billing requirements, the current hospice would have to cancel its NOE and all its billing for that beneficiary, to allow the previous hospice to input its NOE and billing; once the previous hospice files its claims and records the beneficiary's discharge, the current

[39] CMS, ''Calendar Year (CY) 2014 Medicare Advantage Capitation Rates and Medicare Advantage and Part D Payment Policies and Final Call Letter,'' issued April 1, 2013; available at *http://www.cms.gov/Medicare/Health-Plans/MedicareAdvtgSpecRateStats/downloads/Announcement2014.pdf.*

[40] *Tudor CG, Wilson L, and Majestic M. ''Part D Payment for Drugs for Beneficiaries Enrolled in Hospice—Request for Comments,'' memorandum issued December 6, 2013, available at http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/Hospice/Downloads/Hospice-PartD-Payment.pdf.*

hospice could then resubmit its NOE and its claims. The failure of the first hospice to file its NOE promptly creates an administrative burden for the second hospice.

In summary, prompt filing of the NOE avoids compliance problems with the statutorily mandated face-to-face requirement. It also avoids creating burdensome situations for hospices when sequential billing requirements are not met. Finally, because Medicare payments for services related to the terminal illness and related conditions are waived once a hospice election is in place, it is crucial that the NOE be filed promptly to safeguard the integrity of the Medicare Trust Fund, to enable smooth and efficient operation of other Medicare benefits (like Part D), and to safeguard hospice beneficiaries from inappropriate financial liability due to copayments and deductibles for services related to the terminal prognosis. For all of these reasons, we propose that a hospice must file the NOE with its MAC within 3 calendar days after the hospice effective date of election, regardless of how the NOE is filed (by direct data entry, or sent by mail or messenger). Hospices operate 24 hours per day, 7 days per week, so meeting this proposed requirement should be a part of normal business operations. Additionally, we believe that this proposed requirement will relieve hospices of the burden created when some minority of hospices do not file their NOEs promptly, will avoid inappropriate payments to other Part A, Part B, or Part D providers, and will safeguard beneficiaries from inappropriate liability for copayments or deductibles.

Currently, payment for hospice services begins on the effective date of the hospice election, regardless of when the NOE was filed. A commenter on the December 6, 2013 CMS memorandum clarifying drug payment responsibility between Part D, hospice, and beneficiaries suggested that without enforcement actions, hospices would not file NOEs within a short timeframe. We agree that providing a consequence for failing to file NOEs timely would encourage compliance. Therefore, we propose that for those hospices that do not file the NOE timely (that is, within 3 calendar days after the effective date of election), Medicare would not cover and pay for days of hospice care from the effective date of election to the date of filing of the NOE. We propose that these days be considered the financial responsibility of the hospice; the hospice could not bill the beneficiary for them. We believe that this is a reasonable step which would not be burdensome to hospices and would help us to safeguard the integrity of the Medicare Trust Fund, and help protect beneficiaries from inappropriate liability.

Once filed, the process of posting an NOE to the CWF after direct data entry (DDE) takes 1 to 5 days, depending on the host site. If an NOE is not submitted by DDE, the current policy requires hospices to send it to the MAC by mail or messenger. This policy remains in place; however, hospices may need to use overnight mail or an overnight messenger to ensure that paper NOEs are received by the MAC within the proposed 3-calendar-day timeframe after the effective date of election. Given the extremely low volume of NOEs filed by mail or messenger (an average of 68 per year), we do not believe this proposed 3-calendar day filing of the NOE would be burdensome to hospices. Using a speedier form of delivery will ensure that a paper NOE's filing is not delayed by the transit time needed to get the document from the hospice to the MAC.

We invite comment on this proposal and the associated change in the regulation at § 418.24(a) in section VI.

2. Proposed Timeframe for Filing the Notice of Termination/Revocation

Hospices may discharge patients for only three reasons: (1) Due to cause; (2) due to the patient's no longer being terminally ill; or (3) due to the patient's moving outside the hospice's service area. In contrast, hospice patients are free to revoke their election to hospice care at any time. Upon discharge or revocation, a beneficiary resumes the Medicare coverage that had previously been waived by the hospice election. It is important for hospices to record the beneficiary's discharge or revocation in the claims processing system in a timely manner. As previously noted, a number of those commenting on the December 6, 2013 CMS memorandum clarifying drug payment responsibility between Part D, hospices, and beneficiaries wrote that it was critical for beneficiary revocations and live discharges from hospice to be recorded as soon as possible within CMS claims processing systems. Commenters wrote that prompt recording of revocations or discharges is necessary to ensure that the beneficiary is able to access needed items or services, and to ensure that payment for the item or service is from the appropriate source. Providers are allowed 12 months to file a claim, so if a hospice is not prepared to file a final claim quickly, it should instead file a termination/revocation of election notice, so that the claims processing systems are updated to no longer show the beneficiary as being under a hospice election. Hereafter, we will refer to this as a Notice of Termination or Revocation, or NOTR.

We propose to revise the regulations at § 418.26 and § 418.28 to require hospices to file a NOTR within 3 calendar days after the effective date of a beneficiary's discharge or revocation, if they have not already filed a final claim. This would safeguard beneficiaries from any delays or difficulties in accessing needed drugs, items, or services that could occur if the CWF or DTRR continued to show a hospice election in place when in fact it was revoked or a discharge occurred. It would also avoid costs and administrative burden to non-hospice providers and to the claims processing system that would occur for claims for items or services provided after discharge or revocation, which would be rejected if the claims processing systems continued to show the beneficiary as being under a hospice election.

We invite comment on this proposal and the associated changes in the regulations at § 418.26 and § 418.28 in section VI.

F. Proposed Addition of the Attending Physician to the Hospice Election Form

The term ''attending physician'' is defined differently in different health care settings. For the Medicare hospice benefit, ''attending physician'' has a specific definition found in the Social Security Act at 1861(dd)(3)(B):

''The term ''attending physician'' means, with respect to an individual, the physician (as defined in subsection (r)(1)) or nurse practitioner (as defined in subsection (aa)(5)), who may be employed by a hospice program, whom the individual identifies as having the most significant role in the determination and delivery of medical care to the individual at the time the individual makes an election to receive hospice care.''

Our regulations at § 418.3 include a definition for ''attending physician,'' based on the statutory language above. We define it as either (1) a doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the State in which he or she performs that function or action; or (2) a nurse practitioner who meets the training, education, and experience requirements described elsewhere in our regulations. The definition also sets out the requirement that the patient identify the attending physician at the time he or she elects to receive hospice care, as having the most significant role in the determination and delivery of the individual's medical care.

We require that the National Provider Identifier (NPI) of the attending physician be included on the NOE and on each claim. An attending physician can be a physician or a nurse practitioner, as long as he or she meets the requirements set out above. The hospice patient (or his or her representative) chooses the attending physician, not the hospice. This differs from some non-hospice settings, where an attending may be a clinician assigned to provide care to the patient. We stress that in hospice, the attending physician, who may be a nurse practitioner, is chosen by the patient (or his or her representative), and not by the hospice. This requirement is also included as part of the CoPs at § 418.52(c)(4), which states that the patient has the right to choose his or her attending physician. The hospice CoPs at § 418.64(a)(3) further require that if the attending physician is unavailable, the hospice medical director, hospice contracted physician, and/or hospice physician employee is responsible for meeting the medical needs of the patient. Therefore, the patient should receive all needed care, whether that care is provided by hospice doctors, hospice nurse practitioners (NPs), or by the designated attending physician. Hospices can bill Part A for reasonable and necessary physician services provided to hospice beneficiaries by its doctors, regardless of whether those doctors are the designated attending. However, our regulations at § 418.304(e) do not permit Medicare to be billed for reasonable and necessary physician services provided by NPs unless the NP is the attending physician, as defined in § 418.3.

We have recently heard anecdotal reports of hospices changing a patient's attending physician when the patient moves to an inpatient setting for inpatient care, often to a nurse practitioner. We have also heard reports of hospices assigning an attending physician based upon whoever is available. MACs noted that the NPI of the attending physician reported on claims was sometimes changing, and differed from that reported on the NOE. Additionally, using CY 2010 and CY 2011 data, we found that 35 percent of beneficiaries had Part B claims during their hospice election from more than one physician who claimed to be their designated attending physician. The reports of hospices changing a patient's attending physician are of great concern since the statute emphasizes that the attending physician must be chosen by the patient (or his or her representative). Finally, we have also received anecdotal reports that some hospices are not getting the signature of the attending physician on the initial certification. If a beneficiary has designated an attending physician, that physician must sign the initial certification for Medicare to cover and pay for hospice services, unless the attending is an NP.

To ensure the attending physician of record is properly documented in the patient's medical record, we propose to amend the regulations at § 418.24(b)(1) and require the election statement to include the patient's choice of attending physician. The proposed information identifying the attending physician should be recorded on the election statement in enough detail so that it is clear which physician or NP was designated as the attending physician. Hospices have the flexibility to include this information on their election statement in whatever format works best for them, provided the content requirements in § 418.24(b) are met. The language on the election form should include an acknowledgement by the patient (or representative) that the designated attending physician was the patient's (or representative's) choice.

In addition, we further propose that if a patient (or representative) wants to change his or her designated attending physician, he or she must follow a procedure similar to that which currently exists for changing the designated hospice. Specifically, the patient (or representative) must file a signed statement, with the hospice, that identifies the new attending physician in enough detail so that it is clear which physician or NP was designated as the new attending physician. Additionally, we propose that the statement include the date the change is to be effective, the date that the statement is signed, and the patient's (or representative's) signature, along with an acknowledgement that this change in the attending physician is the patient's (or representative's) choice. The effective date of the change in attending physician cannot be earlier than the date the statement is signed. We believe that such a change would help ensure that any changes in the identity of the attending physician would be the result of the patient's free choice.

We invite comment on this proposal and the associated changes in the regulations at § 418.24(b)(1) and § 418.24(f) in section VI.

G. FY 2015 Hospice Wage Index and Rates Update

1. FY 2015 Hospice Wage Index

The hospice wage index is used to adjust payment rates for hospice agencies under the Medicare program to reflect local differences in area wage levels based on the location where services are furnished. The hospice wage index utilizes the wage adjustment factors used by the Secretary for purposes of section 1886(d)(3)(E) of the Act for hospital wage adjustments, and our regulations at § 418.306(c) require each labor market to be established using the most current hospital wage data available, including any changes by the Office of Management and Budget (OMB) to the Metropolitan Statistical Areas (MSAs) definitions. We have consistently used the pre-floor, pre-reclassified hospital wage index when deriving the hospice wage index. In our August 4, 2005 FY 2006 Hospice Wage Index final rule (70 FR 45130), we began adopting the revised labor market area definitions as discussed in the OMB Bulletin No. 03–04 (June 6, 2003). This bulletin announced revised definitions for MSAs and the creation of Core-Based Statistical Areas (CBSAs). The bulletin is available online at *http://www.whitehouse.gov/omb/bulletins/b03–04.html.*

In the FY 2006 Hospice Wage Index final rule, we implemented a 1-year transition policy using a 50/50 blend of the CBSA-based wage index values and the MSA-based wage index values for FY 2006. The one-year transition policy ended on September 30, 2006. For FY 2007 and beyond, we have used CBSAs exclusively to calculate wage index values. OMB has published subsequent bulletins regarding CBSA changes. The most recent CBSA changes used for the FY 2015 hospice wage index are found in OMB Bulletin 10–02, available at: *http://www.whitehouse.gov/sites/default/files/omb/assets/bulletins/b10-02.pdf.*

When adopting OMB's new labor market designations in FY 2006, we identified some geographic areas where there were no hospitals, and thus, no hospital wage index data, which to base the calculation of the hospice wage index. We also adopted the policy that for urban labor markets without a hospital from which hospital wage index data could be derived, all of the CBSAs within the state would be used to calculate a statewide urban average pre-floor, pre-reclassified hospital wage index value to use as a reasonable proxy for these areas in our August 6, 2009 FY 2010 Hospice Wage Index final rule (74 FR 39386). In FY 2015, the only CBSA without a hospital from which hospital wage data could be derived is 25980, Hinesville-Fort Stewart, Georgia.

In our August 31, 2007 FY 2008 Hospice Wage Index final rule (72 FR 50214), we implemented a new methodology to update the hospice

wage index for rural areas without a hospital, and thus no hospital wage data. In cases where there was a rural area without rural hospital wage data, we used the average pre-floor, pre-reclassified hospital wage index data from all contiguous CBSAs to represent a reasonable proxy for the rural area. In our August 31, 2007 FY 2008 Hospice Wage Index final rule, we noted that we interpret the term ''contiguous'' to mean sharing a border (72 FR 50217). Currently, the only rural area without a hospital from which hospital wage data could be derived is Puerto Rico. However, our policy of imputing a rural pre-floor, pre-reclassified hospital wage index based on the pre-floor, pre-reclassified hospital wage index (or indices) of CBSAs contiguous to a rural area without a hospital from which hospital wage data could be derived does not recognize the unique circumstances of Puerto Rico. While we have not identified an alternative methodology for imputing a pre-floor, pre-reclassified hospital wage index for rural Puerto Rico, we will continue to evaluate the feasibility of using existing hospital wage data and, possibly, wage data from other sources. For FY 2008 through FY 2013, we have used the most recent pre-floor, pre-reclassified hospital wage index available for Puerto Rico, which is 0.4047. In this proposed rule, for FY 2015, we continue to use the most recent pre-floor, pre-reclassified hospital wage index value available for Puerto Rico, which is 0.4047.

For FY 2015, we would use the 2014 pre-floor, pre-reclassified hospital wage index to derive the applicable wage index values for the FY 2015 hospice wage index. We would continue to use the pre-floor, pre-reclassified hospital wage data as a basis to determine the hospice wage index values because hospitals and hospices both compete in the same labor markets, and therefore, experience similar wage-related costs. We believe the use of the pre-floor, pre-reclassified hospital wage index data, as a basis for the hospice wage index, results in the appropriate adjustment to the labor portion of the costs. The FY 2015 hospice wage index values presented in this proposed rule were computed consistent with our pre-floor, pre-reclassified hospital (IPPS) wage index policy (that is, our historical policy of not taking into account IPPS geographic reclassifications in determining payments for hospice). The FY 2015 pre-floor, pre-reclassified hospital wage index does not reflect OMB's new area delineations, based on the 2010 Census, as outlined in OMB Bulletin 13–01, released on February 28, 2013. Moreover, the proposed FY 2015 pre-floor, pre-reclassified hospital wage index does not contain OMB's new area delineations. CMS intends to propose changes to the FY 2015 hospital wage index based on the newest CBSA changes in the FY 2015 IPPS proposed rule. Therefore, if CMS incorporates OMB's new area delineations, based on the 2010 Census, in the FY 2015 hospital wage index, those changes would also be reflected in the FY 2016 hospice wage index.

2. FY 2015 Hospice Wage Index With an Additional 15 Percent Reduced Budget Neutrality Adjustment Factor (BNAF)

This proposed rule would update the hospice wage index values for FY 2015 using the FY 2014 pre-floor, pre-reclassified hospital wage index. As described in the August 8, 1997 Hospice Wage Index final rule (62 FR 42860), the pre-floor and pre-reclassified hospital wage index is used as the raw wage index for the hospice benefit. These raw wage index values are then subject to either a budget neutrality adjustment or application of the hospice floor to compute the hospice wage index used to determine payments to hospices. Pre-floor, pre-reclassified hospital wage index values below 0.8 are adjusted by either: (1) The hospice budget neutrality adjustment factor (BNAF); or (2) the hospice floor subject to a maximum wage index value of 0.8; whichever results in the greater value.

The BNAF is calculated by computing estimated payments using the most recent, completed year of hospice claims data. The units (days or hours) from those claims are multiplied by the updated hospice payment rates to calculate estimated payments. For the FY 2015 Hospice Wage Index proposed rule, that means estimating payments for FY 2015 using units (days or hours) from FY 2013 hospice claims data, and applying the FY 2015 hospice payment rates. The FY 2015 hospice wage index values are then applied to the labor portion of the payments. The procedure is repeated using the same units from the claims data and the same payment rates, but using the 1983 Bureau of Labor Statistics (BLS)-based wage index instead of the updated raw pre-floor, pre-reclassified hospital wage index (note that both wage indices include their respective floor adjustments). The total payments are then compared, and the adjustment required to make total payments equal is computed; that adjustment factor is the BNAF.

The August 6, 2009 FY 2010 Hospice Wage Index final rule finalized a provision to phase out the BNAF over 7 years, with a 10 percent reduction in the BNAF in FY 2010, and an additional 15 percent reduction in each of the next 6 years, with complete phase out in FY 2016 (74 FR 39384). Once the BNAF is completely phased out, the hospice floor adjustment would simply consist of increasing any wage index value less than 0.8 by 15 percent, subject to a maximum wage index value of 0.8. Therefore, in accordance with the FY 2010 Hospice Wage final rule, the BNAF for FY 2015 will be reduced by an additional 15 percent for a total BNAF reduction of 85 percent (10 percent from FY 2010, an additional 15 percent from FY 2011, an additional 15 percent for FY 2012, an additional 15 percent for FY 2013 an additional 15 percent in FY 2014 and an additional 15 percent in FY 2015).

The unreduced BNAF for FY 2015 is 0.062060 (or 6.2060 percent). An 85 percent reduction to the BNAF is computed to be 0.009309 (or 0.9309 percent). For FY 2015, this is mathematically equivalent to taking 15 percent of the unreduced BNAF value, or multiplying 0.062060 by 0.15, which equals 0.009309 (0.9309 percent). The BNAF of 0.9309 percent reflects an 85 percent reduction in the BNAF. The 85 percent reduced BNAF (0.9309 percent) was applied to the pre-floor, pre-reclassified hospital wage index values of 0.8 or greater. The 10 percent reduced BNAF for FY 2010 was 0.055598, based on a full BNAF of 0.061775; the additional 15 percent reduced BNAF FY 2011 (for a cumulative reduction of 25 percent) was 0.045422, based on a full BNAF of 0.060562; the additional 15 percent reduced BNAF for FY 2012 (for a cumulative reduction of 40 percent) was 0.035156, based on a full BNAF of 0.058593; the additional 15 percent reduced BNAF for FY 2013 (for a cumulative reduction of 55 percent) was 0.027197, based on a full BNAF of 0.060438; the additional 15 percent reduced BNAF for FY 2014 (for a cumulative reduction of 70 percent) was 0.018461, based on a full BNAF of 0.061538 and the additional 15 percent reduced BNAF for FY 2015 (for a cumulative reduction of 85 percent) is 0.009309, based on a full BNAF of 0.062060.

Hospital wage index values which are less than 0.8 are subject to the hospice floor calculation. For example, if in FY 2014, County A had a pre-floor, pre-reclassified hospital wage index (raw wage index) value of 0.3994, we would perform the following calculations using the budget-neutrality factor (which for this example is an unreduced BNAF of 0.062060, less 85 percent, or 0.009309) and the hospice floor to determine

County A's hospice wage index: Pre-floor, pre-reclassified hospital wage index value below 0.8 multiplied by 1 + 85 percent reduced BNAF: (0.3994 × 1.009309 = 0.4031); Pre-floor, pre-reclassified hospital wage index value below 0.8 multiplied by 1 + hospice floor: (0.3994 × 1.15 = 0.4593). Based on these calculations, County A's hospice wage index would be 0.4593. The BNAF may be updated for the final rule based on availability of more complete data.

An addendum A and Addendum B with the FY 2015 wage index values for rural and urban areas will not be published in the **Federal Register**. The FY 2015 wage index values for rural areas and urban areas are available via the internet at: *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/Hospice/index.html.* The hospice wage index for FY 2015 set forth in this proposed rule includes the BNAF reduction and would be effective October 1, 2014 through September 30, 2015.

3. Proposed Hospice Payment Update Percentage

Section 4441(a) of the Balanced Budget Act of 1997 (BBA) amended section 1814(i)(1)(C)(ii)(VI) of the Act to establish updates to hospice rates for FYs 1998 through 2002. Hospice rates were to be updated by a factor equal to the market basket index, minus 1 percentage point. Payment rates for FYs since 2002 have been updated according to section 1814(i)(1)(C)(ii)(VII) of the Act, which states that the update to the payment rates for subsequent FYs must be the market basket percentage for that FY. The Act requires us to use the inpatient hospital market basket to determine the hospice payment rate update. In addition, section 3401(g) of the Affordable Care Act mandates that, starting with FY 2013 (and in subsequent FYs), the hospice payment update percentage will be annually reduced by changes in economy-wide productivity as specified in section 1886(b)(3)(B)(xi)(II) of the Act. In addition, section 3401(g) of the Affordable Care Act also mandates that in FY 2013 through FY 2019, the hospice payment update percentage will be reduced by an additional 0.3 percentage point (although for FY 2014 to FY 2019, the potential 0.3 percentage point reduction is subject to suspension under conditions specified in section 1814(i)(1)(C)(v) of the Act). The proposed hospice payment update percentage for FY 2015 is based on the estimated inpatient hospital market basket update of 2.7 percent (based on IHS Global Insight, Inc.'s first quarter 2014 forecast with historical data through the fourth quarter of 2013). Due to the requirements at 1886(b)(3)(B)(xi)(II) and 1814(i)(1)(C)(v) of the Act, the estimated inpatient hospital market basket update for FY 2015 of 2.7 percent must be reduced by a productivity adjustment as mandated by Affordable Care Act (currently estimated to be 0.4 percentage point for FY 2015). The estimated inpatient hospital market basket for FY 2015 is reduced further by a 0.3 percentage point, as mandated by the Affordable Care Act. In effect, the proposed hospice payment update percentage for FY 2015 is 2.0 percent. We are also proposing that if more recent data are subsequently available (for example, a more recent estimate of the inpatient hospital market basket and productivity adjustment), we would use such data, if appropriate, to determine the FY 2015 market basket update and the multi-factor productivity MFP adjustment in the FY 2015 Hospice PPS final rule.

Currently, the labor portion of the hospice payment rates is as follows: for Routine Home Care, 68.71 percent; for Continuous Home Care, 68.71 percent; for General Inpatient Care, 64.01 percent; and for Respite Care, 54.13 percent. The non-labor portion is equal to 100 percent minus the labor portion for each level of care. Therefore, the non-labor portion of the payment rates is as follows: for Routine Home Care, 31.29 percent; for Continuous Home Care, 31.29 percent; for General Inpatient Care, 35.99 percent; and for Respite Care, 45.87 percent.

4. Proposed FY 2015 Hospice Payment Rates

Historically, the hospice rate update has been published through a separate administrative instruction issued annually in the summer to provide adequate time to implement system change requirements; however, beginning in FY 2014 and for subsequent fiscal years, we are using rulemaking as the means to update payment rates. This change was proposed in the FY 2014 Hospice Wage Index and Payment Rate Update proposed rule and finalized in the FY 2014 Hospice Wage Index and Payment Rate Update final rule (78 FR 48270). It is consistent with the rate update process in other Medicare benefits, and provides rate information to hospices as quickly as, or earlier than, when rates are published in an administrative instruction.

There are four payment categories that are distinguished by the location and intensity of the services provided. The base payments are adjusted for geographic differences in wages by multiplying the labor share, which varies by category, of each base rate by the applicable hospice wage index. A hospice is paid the routine home care rate for each day the beneficiary is enrolled in hospice, unless the hospice provides continuous home care, inpatient respite care, or general inpatient care. Continuous home care is provided during a period of patient crisis to maintain the patient at home; inpatient respite care is short-term care to allow the usual caregiver to rest; and general inpatient care is to treat symptoms that cannot be managed in another setting.

The FY 2015 payment rates would be the FY 2014 payment rates, increased by 2.0 percent, which is the proposed hospice payment update percentage for FY 2015 as discussed in section III.G.3. The preliminary FY 2015 hospice payment rates would be effective for care and services furnished on or after October 1, 2014, through September 30, 2015 (see Table 6 below).

TABLE 6—FY 2015 HOSPICE PAYMENT RATES UPDATED BY THE PROPOSED HOSPICE PAYMENT UPDATE PERCENTAGE

Code	Description	FY 2014 payment rates	Multiply by the FY 2015 proposed hospice payment update of 2.0 percent	FY 2015 preliminary payment rate
651	Routine Home Care	$156.06	× 1.02	$159.18
652	Continuous Home Care Full Rate = 24 hours of care $ = 38.71 hourly rate.	910.78	× 1.02	929.00
655	Inpatient Respite Care	161.42	× 1.02	164.65
656	General Inpatient Care	694.19	× 1.02	708.07

We reiterate in this proposed rule, that the Congress required in sections 1814(i)(5)(A) through (C) of the Act that hospices begin submitting quality data, based on measures to be specified by the Secretary. In the FY 2012 Hospice Wage Index final rule (76 FR 47320 through 47324), we implemented a Hospice Quality Reporting Program (HQRP) as required by section 3004 of the Affordable Care Act. Hospices were required to begin collecting quality data in October 2012, and submit that quality data in 2013. Section 1814(i)(5)(A)(i) of the Act requires that beginning with FY 2014 and each subsequent FY, the Secretary shall reduce the market basket update by 2 percentage points for any hospice that does not comply with the quality data submission requirements with respect to that FY.). We remind hospices that this applies to payments in FY 2015 (See Table 7 below). For more information on the HQRP requirements please see section III.H in this proposed rule.

TABLE 7—FY 2015 HOSPICE PAYMENT RATES UPDATED BY THE PROPOSED HOSPICE PAYMENT UPDATE PERCENTAGE FOR HOSPICES THAT *DO NOT* SUBMIT THE REQUIRED QUALITY DATA

Code	Description	FY 2014 payment rates	Multiply by the FY 2015 hospice payment update percentage of 2.0 percent minus 2 percentage points (−0.2)	FY 2015 preliminary payment rate
651	Routine Home care	$156.06	× 1.00	$156.06
652	Continuous Home Care Full Rate = 24 hours of care $ = 37.95 hourly rate.	910.78	× 1.00	910.78
655	Inpatient Respite Care	161.42	× 1.00	161.42
656	General Inpatient Care	694.19	× 1.00	694.19

A Change Request with the finalized hospice payment rates, a finalized hospice wage index, the Pricer for FY 2015, and the hospice cap amount for the cap year ending October 31, 2014 will be issued in the summer.

To assist the hospice industry in planning and budgeting, CMS is informing the hospice industry of the aggregate cap amount for the 2014 cap year in advance of the formal CMS administrative notice, which will be issued this summer. Additionally, we have included information about how we calculate the aggregate cap amount so that hospices can compute the amount themselves in the future if they so desire. This information is also in CMS' Internet-Only Manual 100–2, chapter 9, section 90.2.6. The manual can be accessed from the ''Manuals and Transmittals'' section of CMS' hospice Web site at *http://www.cms.gov/Center/Provider-Type/Hospice-Center.html.* Please refer to section III.D of this proposed rule on the proposal to expedite hospice cap determinations.

The hospice aggregate cap amount for the 2014 cap year will be $26,725.79. The cap amount is calculated according to § 1814(i)(2)(B) of the Social Security Act. The cap amount for a given year is $6,500 multiplied by the change in the Consumer Price Index for All Urban Consumers (CPI–U) medical care expenditure category, from the fifth month of the 1984 accounting year (March 1984) to the fifth month the current accounting year (in this case, March 2014). The CPI–U for medical care expenditures for 1984 to present is available from the Bureau of Labor Statistics (BLS) Web site at: *http://www.bls.gov/cpi/home.htm.*

(Step 1) From the BLS Web site given above, the March 2014 CPI–U for medical care expenditures is 433.369 and the 1984 CPI–U for medical care expenditures was 105.4.

(Step 2) Divide the March 2014 CPI–U for medical care expenditures by the 1984 CPI–U for medical care expenditures to compute the change.

433.369/105.4 = 4.111660

(Step 3) Multiply the original cap base amount ($6,500) by the result from step 2) to get the updated aggregate cap amount for the 2014 cap year.

$6,500 × 4.111660= $26,725.79

H. Proposed Updates to the Hospice Quality Reporting Program

1. Background and Statutory Authority

Section 3004 of the Affordable Care Act amended the Act to authorize a quality reporting program for hospices. Section 1814(i)(5)(A)(i) of the Act requires that beginning with FY 2014 and each subsequent FY, the Secretary shall reduce the market basket update by 2 percentage points for any hospice that does not comply with the quality data submission requirements with respect to that FY. Depending on the amount of the annual update for a particular year, a reduction of 2 percentage points could result in the annual market basket update being less than 0.0 percent for a FY and may result in payment rates that are less than payment rates for the preceding FY. Any reduction based on failure to comply with the reporting requirements, as required by section 1814(i)(5)(B) of the Act, would apply only for the particular FY involved. Any such reduction would not be cumulative or be taken into account in computing the payment amount for subsequent FYs.

Section 1814(i)(5)(C) of the Act requires that each hospice submit data to the Secretary on quality measures specified by the Secretary. The data must be submitted in a form, manner, and at a time specified by the Secretary. Any measures selected by the Secretary must have been endorsed by the consensus-based entity which holds a contract regarding performance measurement with the Secretary under section 1890(a) of the Act. This contract is currently held by the National Quality Forum (NQF). However, section 1814(i)(5)(D)(ii) of the Act provides that in the case of a specified area or medical topic determined appropriate by the Secretary for which a feasible and practical measure has not been endorsed by the consensus-based entity, the Secretary may specify measures that are not so endorsed as long as due consideration is given to measures that have been endorsed or adopted by a consensus-based organization identified by the Secretary.

The successful development of a Hospice Quality Reporting Program (HQRP) that promotes the delivery of high quality healthcare services is our paramount concern. We seek to adopt measures for the HQRP that promote efficient and safer care. Our measure

selection activities for the HQRP takes into consideration input we receive from the Measure Applications Partnership (MAP), convened by the National Quality Forum (NQF), as part of a pre-rulemaking process that we have established and are required to follow under section 1890A of the Act. The MAP is a public-private partnership comprised of multi-stakeholder groups convened by the NQF for the primary purpose of providing input to CMS on the selection of certain categories of quality and efficiency measures, as required by section 1890A(a)(3) of the Act. By February 1st of each year, the NQF must provide that input to CMS. Input from the MAP is located at: (*http://www.qualityforum.org/Setting_Priorities/Partnership/Measure_Applications_Partnership.aspx*). For more details about the pre-rulemaking process, see the FY 2013IPPS/LTCH PPS final rule (77 FR 53376).

We also take into account national priorities, such as those established by the National Priorities Partnership at (*http://www.qualityforum.org/npp/*), the HHS Strategic Plan *http://www.hhs.gov/secretary/about/priorities/priorities.html*), the National Strategy for Quality Improvement in Healthcare located at (*http://www.ahrq.gov/workingforquality/nqs/nqs2013annlrpt.htm*) and the CMS Quality Strategy at *http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/QualityInitiativesGenInfo/CMS-Quality-Strategy.html*.

To the extent practicable, we have sought to adopt measures that have been endorsed by the national consensus organization, recommended by multi-stakeholder organizations, and developed with the input of providers, purchasers/payers, and other stakeholders.

2. Measures for Hospice Quality Reporting Program and Data Submission Requirements for Payment Years FY 2014 and FY 2015

As stated in the FY 2012 Hospice Wage Index final rule (76 FR 47302, 47320), to meet the quality reporting requirements for hospices for the FY 2014 payment determination and in the CY 2013 Home Health Prospective Payment System (HH PPS) final rule (77 FR 67068, 67133), to meet the quality reporting requirements for hospices for the FY 2015 payment determination, as set forth in section 1814(i)(5) of the Act, we finalized the requirement that hospices report two measures:

- An NQF-endorsed measure that is related to pain management, NQF #0209. The data for this measure are collected at the patient level, but are reported in the aggregate for all patients cared for within the reporting period, regardless of payer.
- A structural measure that is not endorsed by NQF: Participation in a Quality Assessment and Performance Improvement (QAPI) program that includes at least three quality indicators related to patient care.

3. Quality Measures for Hospice Quality Reporting Program and Data Submission Requirements for Payment Year FY 2016 and Beyond

In the FY 2014 Hospice Wage Index and Payment Rate Update final rule (78 FR 48234, 48256), we finalized that the structural measure related to QAPI indicators and the NQF #0209 pain measure would not be required for the HQRP beyond data submission for the FY 2015 payment determination. The data submission period for the FY2015 payment determination closed on April 1, 2014.

As stated in the CY 2013 HH PPS final rule (77 FR 67068, 67133), we considered an expansion of the required measures to include additional measures endorsed by NQF. We also stated that to support the standardized collection and calculation of quality measures by CMS, collection of the needed data elements would require a standardized data collection instrument. We developed and tested a hospice patient-level item set, the Hospice Item Set (HIS) to be used by all hospices to collect and submit standardized data items about each patient admitted to hospice.

In developing the standardized HIS, we considered comments offered in response to the CY 2013 HH PPS proposed rule (77 FR 41548, 41573). In the FY 2014 Hospice Wage Index final rule (78 FR 48257), and in compliance with section 1814(i)(5)(C) of the Act, we finalized the specific collection of data items that support the following six NQF endorsed measures and one modified measure for hospice:

- NQF #1617 Patients Treated with an Opioid who are Given a Bowel Regimen
- NQF #1634 Pain Screening
- NQF #1637 Pain Assessment
- NQF #1638 Dyspnea Treatment
- NQF #1639 Dyspnea Screening
- NQF #1641 Treatment Preferences
- NQF #1647 Beliefs/Values Addressed (if desired by the patient) (modified)

To achieve a comprehensive set of hospice quality measures available for wide spread use for quality improvement and informed decision making, and to carry out our commitment to develop a quality reporting program for hospices that uses standardized methods to collect data needed to calculate quality measures, we finalized that the HIS will be implemented in July 2014 (78 FR 48257). To meet the quality reporting requirements for hospices for the FY 2016 payment determination and each subsequent year, we will require regular and ongoing electronic submission of the HIS data for each patient admission to hospice on or after July 1, 2014, regardless of payer or patient age (78 FR 48234, 48258). Collecting data on all patients will provide CMS with the most robust, accurate reflection of the quality of care delivered to Medicare beneficiaries as compared with non-Medicare patients. Therefore, to measure the quality of care that is delivered to Medicare beneficiaries in the hospice setting, we will collect quality data necessary to calculate the adopted measures on all patients. We are requiring in our regulation that hospices collect data on all patients in hospice in order to ensure that all patients, regardless of payer, are receiving the same care and that provider metrics measure performance across the spectrum of patients (78 FR 48258).

Hospices are required to complete and submit an admission HIS and a discharge HIS for each patient admission. Hospices failing to report quality data via the HIS in 2014 will have their market basket update reduced by 2 percentage points in FY 2016. Although this has been implemented thus far pursuant to instructions set out in our preamble statements, we are proposing to codify the HIS submission requirements at § 418.312 in this proposed rule. The System of Record (SOR) Notice for the HIS, SOR number 09–07–0548, was published in the **Federal Register** on April 8, 2014 (79 FR 19341).

Hospice programs will be evaluated for purposes of the quality reporting program based on whether or not they submit data, not on their performance level on required measures. We have provided hospices with information and details about use of the HIS through postings on the Hospice Quality Reporting Program Web page, Open Door Forums, announcements in the CMS MLN Connects Provider e-News (E-News), and provider training. Electronic data submission is required for HIS submission in CY 2014 and beyond; there are no other data submission methods available. CMS will make available submission software for the HIS to hospices at no cost. We will also provide reports to individual

hospices on their performance on the measures calculated from data submitted via the HIS. The specifics of the reporting system and precisely when specific measures will be made available have not yet been determined. We intend to report to providers on the seven finalized measures on a schedule to be determined.

We provided details on data collection and submission timing at *http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Hospice-Quality-Reporting/Hospice-Item-Set-HIS.html.*

Submission of the HIS on all patient admissions to hospice, regardless of payer or patient age, is required. The data submission system provides reports upon successful submission and successful processing of the HIS records. The final validation report may serve as evidence of submission. This is the same data submission system used by nursing homes, inpatient rehabilitation facilities and long-term care hospitals for the submission of Minimum Data Set Version 3.0 (MDS 3.0), Inpatient Rehabilitation Facility—Patient Assessment Instrument (IRF–PAI), and Long-Term Care Hospital Continuity Assessment Record & Evaluation Data Set (LTCH CARE), respectively.

We also propose that newly certified hospices that receive notice of their CMS certification number on or after November 1, 2014 for payments to be made in FY 2016 be excluded from the quality reporting requirements for the FY 2016 payment determination as data submission and analysis would not be possible for a hospice receiving notification of their certification this late in the reporting time period.

We propose that in future years, hospices that receive notification of certification on or after November 1 of the preceding year involved would continue to be excluded from any payment penalty for quality reporting purposes for the following FY. We propose to codify this requirement at § 418.312.

As is common in other quality reporting programs, we propose to make accommodations in the case of natural disaster or other extenuating circumstances. Our experience with other quality reporting programs has shown that there are times when providers are unable to submit quality data due to extraordinary circumstances beyond their control (for example, natural or man-made disasters). A disaster may be widespread or impact multiple structures or be isolated and impact a single site only. We do not wish to penalize providers in these circumstances or to unduly increase their burden during these times. Therefore, we propose a process, for the FY 2016 payment determination and subsequent payment determinations, for hospices to request and for CMS to grant extensions/exceptions with respect to the reporting of required quality data when there are extraordinary circumstances beyond the control of the provider. When an extension/exception is granted, a hospice will not incur payment reduction penalties for failure to comply with the requirements of the HQRP.

Under the proposed process for the FY 2016 payment determination and subsequent payment determinations, a hospice may request an extension/exception of the requirement to submit quality data for a specified time period. We propose a process that, in the event that a hospice requests an extension/exception for quality reporting purposes for the FY 2016 payment determination and subsequent payment determinations, the hospice would submit a written request to CMS. Requirements for requesting an extension/exception will be available on the Hospice Quality Reporting Web site at *http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Hospice-Quality-Reporting/index.html.*

This proposal does not preclude us from granting extensions/exceptions to hospices that have not requested them when we determine that an extraordinary circumstance, such as an act of nature, affects an entire region or locale. We also propose that we may grant an extension/exception to a hospice if we determine that a systemic problem with our data collection systems directly affected the ability of the hospice to submit data. If we make the determination to grant an extension/exception to hospices in a region or locale, we are proposing to communicate this decision through routine communication channels to hospices and vendors, including, but not limited to, Open Door Forums, E-News and notices on *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Hospice-Quality-Reporting/.*

4. Future Measure Development

We are not proposing any new measures for the HQRP at this time. However, we believe future development of the HQRP should address existing measure gaps by focusing on two primary opportunities: to expand measures already in use in other quality reporting programs that could apply to the HQRP and to develop new measures if no suitable measures are ready for implementation or expansion. We are particularly interested in outcome measures for symptom management, particularly pain. We are also interested in measures of patient reported outcomes. We welcome comments and input on future measure development.

CMS is also interested in understanding the current state of electronic health record (EHR) adoption and usage and Health Information Exchange (HIE) in the hospice community. Therefore, we are soliciting feedback and input from providers on topics such as decision support, whether hospices have adopted an EHR, if so, what functional aspects of the EHR do hospices find most important (for example, the ability to send or receive transfer of care information, ability to support medication orders/medication reconciliation); does the EHR used in the hospice setting support interoperable document exchange with other healthcare providers (for example, acute care hospitals, physician practices, and skilled nursing facilities? In addition to seeking public input on the feasibility and desirability of electronic health record adoption and use of HIE in hospices, we are also interested in public comment on the need to develop and the benefits and limitations of implementing electronic clinical quality measures for hospice providers.

HHS believes all patients, their families, and their healthcare providers should have consistent and timely access to their health information in a standardized format that can be securely exchanged between the patient, providers, and others involved in the patient's care. (HHS August 2013 Statement, Principles and Strategies for Accelerating Health Information Exchange.) The Department is committed to accelerating health information exchange (HIE) through the use of electronic health records (EHRs) and other types of health information technology (HIT) across the broader care continuum through a number of initiatives including: (1) Alignment of incentives and payment adjustments to encourage provider adoption and optimization of HIT and HIE services through Medicare and Medicaid payment policies; (2) adoption of common standards and certification requirements for interoperable HIT; (3) support for privacy and security of patient information across all HIE-focused initiatives; and (4) governance of health information networks. These initiatives are designed to encourage

HIE among all health care providers, including professionals and hospitals eligible for the Medicare and Medicaid EHR Incentive Programs and those who are not eligible for the EHR Incentive Programs, and are designed to improve care delivery and coordination across the entire care continuum. To increase flexibility in the Office of the National Coordinator for Health Information Technology's (ONC) HIT Certification Program and expand HIT certification, ONC has issued a proposed rule concerning a voluntary 2015 Edition EHR certification criteria which would more easily accommodate certification of HIT used in other types of health care settings where individual or institutional health care providers are not typically eligible for incentive payments under the Medicare and Medicaid EHR Incentive Programs, such as long-term and post-acute care and behavioral health settings.

We believe that HIE and the use of certified EHRs by Hospice (and other types of providers that are ineligible for the Medicare and Medicaid EHR Incentive Programs) can effectively and efficiently help providers improve internal care delivery practices, support management of patient care across the continuum, and enable the reporting of electronically specified clinical quality measures (eCQMs). More information on the identification of EHR certification criteria and development of standards applicable to Hospice can be found at:

http://healthit.gov/policy-researchers-implementers/standards-and-certification-regulations

http://www.healthit.gov/facas/FACAS/health-it-policy-committee/hitpc-workgroups/certificationadoption

http://wiki.siframework.org/LCC+LTPAC+Care+Transition+SWG

http://wiki.siframework.org/Longitudinal+Coordination+of+Care

5. Public Availability of Data Submitted

Under section 1814(i)(5)(E) of the Act, the Secretary is required to establish procedures for making any quality data submitted by hospices available to the public. Measures reported publicly will not display patient identifiable information. The procedures ensure that a hospice would have the opportunity to review the data regarding the hospice's respective program before it is made public. In addition, under section 1814(i)(5)(E) of the Act, the Secretary is authorized to report quality measures that relate to services furnished by a hospice on the CMS Web site. We recognize that public reporting of quality data is a vital component of a robust quality reporting program and are fully committed to developing the necessary systems for public reporting of hospice quality data. We also recognize that it is essential that the data made available to the public be meaningful and that comparing performance between hospices requires that measures be constructed from data collected in a standardized and uniform manner. The development and implementation of a standardized data set for hospices must precede public reporting of hospice quality measures. Once hospices have implemented the standardized data collection approach, we will have the data needed to establish the scientific soundness of the quality measures that can be calculated using the standardized data collection. It is critical to establish the reliability and validity of the measures prior to public reporting in order to demonstrate the ability of the measures to distinguish between the quality of services provided. To establish reliability and validity of the quality measures, at least four quarters of data will need to be analyzed. Typically the first two quarters of data reflect the learning curve of the providers as they adopt a standardized data collection; these data are not used to establish reliability and validity. This means that, since we will begin data collection in CY 2014 (Q3), the data from CY 2014 (Q3, Q4) will not be used for assessing validity and reliability of the quality measures. Data collected by hospices during Q1–3 CY 2015 will be analyzed starting in CY 2015. Decisions about whether to report some or all of the quality measures publicly will be based on the findings of analysis of the CY 2015 data. In addition, as noted, the Affordable Care Act requires that reporting be made public on a CMS Web site and that providers have an opportunity to review their data prior to public reporting. CMS will develop the infrastructure for public reporting, and provide hospices an opportunity to review their data. In light of all the steps required prior to data being publicly reported, we anticipate that public reporting will not be implemented in FY 2016. Public reporting may occur during FY 2017, allowing ample time for data analysis, review of measures' appropriateness for use for public reporting, and allowing hospices the required time to review their own data prior to public reporting. We will announce the timeline for public reporting of data in future rulemaking. We welcome public comment on what we should consider when developing future proposals related to public reporting.

6. Proposed Adoption of the CAHPS® Hospice Survey for the FY 2017 Payment Determination

In the FY 2014 Hospice Wage Index and Payment Rate Update final rule (78 FR 48234), we stated that CMS would start national implementation of the CAHPS® Hospice Survey as of January 1, 2015. (Previously known as the Hospice Experience of Care Survey, HECS.) We are maintaining our existing policy and are moving forward with national implementation of this survey. The CAHPS® Hospice Survey is a component of CMS' quality reporting program that emphasizes the experiences of hospice patients and their primary caregivers listed in the hospice patients' records. Measures from the survey will be submitted to the National Quality Forum (NQF) for approval as hospice quality measures. Please refer to our extensive discussion of the Hospice Experience of Care Survey in the Hospice Wage Index FY 2014 final rule for a description of the measurements involved and their relationship to the statutory requirement for hospice quality reporting (78 FR 48261–482–66).

a. Background and Description of the Survey

Before the development of the CAHPS® Hospice Survey, there was no official national standard hospice experience of care survey that included standard survey administration protocols. The CAHPS® Hospice Survey will include detailed survey administration protocols which will allow for fair comparisons across hospices.

CMS developed the CAHPS® Hospice Survey with input from many stakeholders, including other government agencies, industry stakeholders, consumer groups and other key individuals and organizations involved in hospice care. The Survey was designed to measure and assess the experiences of patients who died while receiving hospice care as well as the experiences of their informal caregivers. The goals of the survey are to—

- Produce comparable data on patients' and caregivers' perspectives of care that allow objective and meaningful comparisons between hospices on domains that are important to consumers;
- Create incentives for hospices to improve their quality of care through public reporting of survey results; and
- Hold hospice care providers accountable by informing the public about the providers' quality of care.

The development process for the survey began in 2012 and included a

public request for information about publically available measures and important topics to measure (78 FR 5458); a review of the existing literature on tools that measure experiences with end-of-life care; exploratory interviews with caregivers of hospice patients; a technical expert panel attended by survey development and hospice care quality experts; cognitive interviews to test draft survey content; incorporation of public responses to **Federal Register** notices (78 FR 48234) and a field test conducted by CMS in November and December 2013.

Thirty-three hospice programs from 29 hospice organizations participated in the field test, which was designed to assess survey administration procedures among hospices of varying size, geographic region, chain status, ownership, and urbanicity. Respondents were primary caregivers of patients who died while receiving hospice care in the prior 2 to 5 months. In all, 1,136 respondents, representing the three main settings of hospice care (home, nursing home, and inpatient, including freestanding hospice inpatient unit, and acute care hospitals), completed the field test survey. Field test survey data were analyzed to identify for removal survey questions which exhibited little variation between hospices or for which there was little room for hospice improvement. Field test survey data were further analyzed to identify composite measures of hospice performance, including Communication, Care Coordination, Getting Timely Care, Treating Your Family Member with Respect, Providing Emotional Support, and Getting Help for Symptoms.

The CAHPS® Hospice Survey treats the dying patient and his or her informal caregivers (family members or friends) as the unit of care. The Survey seeks information from the informal caregivers of patients who died while enrolled in hospices. Caregivers will be identified using hospice records. Fielding timelines give the respondent some recovery time (two to three months), while simultaneously not delaying so long that the respondent is likely to forget details of the hospice experience. The survey focuses on topics that are important to hospice users and for which informal caregivers are the best source for gathering this information. These include communications with hospice staff, treatment of symptoms, pain medication, cooperation among caregivers, treating patients with dignity and respect, and spiritual support offered by the hospice. Caregivers will be presented with a set of standardized questions about their own experiences and the experiences of the patient in hospice care. During national implementation of this survey, hospices are required to conduct the survey to meet the hospice quality reporting requirements, but individual caregivers will respond only if they voluntarily choose to do so. As part of national implementation we will launch a Web site intended as the primary information resource for hospices and vendors (*www.hospicecahpssurvey.org*). The Web site is expected to launch in the summer of 2014. The launch date will be announced at the Home Health, Hospice, and Durable Medical Equipment Open Door forum conducted by CMS (*http://www.cms.gov/Outreach-and-Education/Outreach/OpenDoorForums/ODF_HHHDME.html*).

The CAHPS® Hospice Survey will initially be available in English and Spanish. CMS will provide additional translations of the survey over time in response to suggestions for any additional language translations. Requests for additional language translations should be made to the CMS Hospice CAHPS® Project Team at *hospicesurvey@cms.hhs.gov*.

In general, hospice patients and their caregivers are eligible for inclusion in the survey sample with the exception of the following ineligible groups: primary caregivers of patients under the age of 18 at the time of death; primary caregivers of patients who died within 48 hours of admission to hospice care; patients for whom no caregiver is listed or available, or for whom caregiver contact information is not known; patients whose primary caregiver is a legal guardian unlikely to be familiar with care experiences; patients for whom the primary caregiver has a foreign (Non-US or US Territory address) home address; patients or caregivers of patients who request that they not be contacted (those who sign ''no publicity'' requests while under the care of hospice or otherwise directly request not to be contacted) . Identification of patients and caregivers for exclusion will be based on hospice administrative data.

Hospices with fewer than 50 decedents during the prior calendar year are exempt from the CAHPS® Hospice Survey data collection and reporting requirements for payment determination. Hospices with 50 to 699 decedents in the prior year (n = 2,326 in 2012) will be required to survey all cases. For large hospices with 700 or more decedents in the prior year (n = 274 in 2012), a sample of 700 will be drawn under an equal-probability design.

For national implementation, we have assumed an eligibility rate of 85% and a response rate of 50%, based on experience in the 2013 field test of the CAHPS® Hospice Survey instrument. These rates will result in an estimated 300 completed questionnaires for each large hospice (700 or more decedents in the calendar year) and between 21 and 300 completed questionnaires for hospices with between 50 and 699 decedents during the calendar year. Assuming a total of 300 completes within each hospice and an intraclass correlation coefficient (ICC) of 0.01, which measures the amount of variability between hospices, we would achieve an interunit reliability of 0.75. Note that in Medicare CAHPS® a reliability of 0.75 is regarded as a minimal acceptable standard.

We will move forward with a model of national survey implementation which is similar to that of other CMS patient experience of care surveys. Medicare-certified hospices will contract with a third-party vendor that is CMS-trained and approved to administer the survey on their behalf. Hospices are required to contract with independent survey vendors to ensure that the data are unbiased and collected by an organization that is trained to collect this type of data. It is important that survey respondents feel comfortable sharing their experiences with an interviewer not directly involved in providing the care. We have successfully used this mode of data collection in other settings, including for Medicare-certified home health agencies. The goal is to ensure that we have comparable data across all hospices.

Hospices will be required to provide their vendor with the sampling frame on a monthly basis. Participation requirements for the survey begin January 1, 2015 for the FY 2017 Annual Payment Update. For hospices, this means they will have to start conducting the survey as of January 1, 2015 and will incur the costs of hiring a survey vendor. The survey vendor would be the business associate of the hospice.

A list of approved vendors will be provided on the CAHPS® Hospice Survey Web site closer to the launch of national implementation. Beginning summer 2014 interested vendors may apply to become approved CAHPS® Hospice Survey vendors. The application process will be online at www.hospicecahpssurvey.org. In this rule we propose to codify the requirements for being an approved

CAHPS® Hospice Survey vendor for the FY 2017 APU.

Consistent with many other CMS CAHPS® surveys that are publicly reported on CMS Web sites, CMS will publicly report hospice data when at least 12 months of data are available, so that valid comparisons can be made across hospice providers in the United States, to help patients, family and friends choose a hospice program for themselves or their loved ones.

b. Participation Requirements To Meet Quality Reporting Requirements for the FY 2017 APU

In section 3004 of the Affordable Care Act, the Secretary is directed to establish quality reporting requirements for Hospice Programs. The CAHPS® Hospice Survey is a component of the CMS Quality Reporting Requirements for the FY 2017 APU and subsequent years.

The CAHPS® Hospice Survey is the only nationally implemented survey of civilian patient and caregiver experiences with hospice that includes both a standard questionnaire and standard survey administration protocols. Such standardization is needed in order to establish that the resulting survey data is comparable across hospices and is suitable for public reporting.

The CAHPS® Hospice Survey includes the measures detailed below. The measures map directly to the CAHPS® Hospice Survey. The individual survey questions that comprise each measure are listed under the measure. These measures are in the process of being submitted to the National Quality Forum (NQF).

TABLE 9—HOSPICE EXPERIENCE OF CARE SURVEY QUALITY MEASURES AND THEIR ITEMS

Hospice Team Communication
How often did the hospice team listen carefully to you when you talked with them about problems with your family member's hospice care?
While your family member was in hospice care, how often did the hospice team listen carefully to you?
While your family member was in hospice care, how often did the hospice team explain things in a way that was easy to understand?
While your family member was in hospice care, how often did the hospice team keep you informed about your family's condition?
While your family member was in hospice care, how often did the hospice team keep you informed about when they would arrive to care for your family member?
Getting Timely Care
While your family member was in hospice care, when you or your family member asked for help from the hospice team, how often did you get help as soon as you needed it?
How often did you get the help you needed from the hospice team during evenings, weekends, or holidays?
Treating Family Member with Respect
While your family member was in hospice care, how often did the hospice team treat your family member with dignity and respect?
While your family member was in hospice care, how often did you feel that the hospice team really cared about your family member?
Providing Emotional Support
In the weeks after your family member died, how much emotional support did you get from the hospice team?
While your family member was in hospice care, how much emotional support did you get from the hospice team?
Getting Help for Symptoms
How often did your family member receive the help he or she needed from the hospice team for feelings of anxiety or sadness?
Did your family member get as much help with pain as he or she needed?
How often did your family member get the help he or she needed for constipation?
How often did your family member get the help he or she needed for trouble breathing?
Information Continuity
While your family member was in hospice care, how often did anyone from the hospice team give you confusing or contradictory information about your family member's condition or care?
Understanding the Side Effects of Pain Medication
Side effects of pain medicine include things like sleepiness. Did any member of the hospice team discuss side effects of pain medicine with you or your family member?
Getting Hospice Care Training (Home Setting of Care Only)
Did the hospice team give you enough training about what to do if your family member became restless or agitated?
Did the hospice team give you enough training about if and when to give more pain medicine to your family member?
Did the hospice team give you enough training about how to help your family member if he or she had trouble breathing?
Did the hospice team give you enough training about what side effects to watch for from pain medicine?

In order to comply with CMS's quality reporting requirements, hospices will be required to collect data using the Consumer Assessment of Healthcare Providers and Systems (CAHPS®) Hospice Survey. Hospices would be able to comply by utilizing only CMS-approved third party vendors that are in compliance with the provisions of proposed § 418.312(e).

In the FY Hospice Wage Index and Rate Update final rule (78 FR 48234), we stated that national implementation of the CAHPS® Hospice Survey will begin with a ''dry run'' in the first quarter of CY 2015. Hospices will be required to contract with an approved survey vendor to conduct a dry run of the survey for at least one month during January 2015, February 2015, or March 2015. During this period the survey vendor will follow all the national implementation procedures, but the data will not be publicly reported. The dry run will provide hospices and their vendors with the opportunity to work together under test circumstances.

Beginning April 1, 2015, all hospices would be required to participate in the survey on an ongoing monthly basis. This means hospices need to contract with a survey vendor to conduct the survey monthly on their behalf. Participation for at least 1 month during the dry run, plus monthly participation for the 9 months between April 2015 and December 2015 (inclusive) will be required to meet the pay for reporting requirement of the HQRP for the FY 2017 APU.

Approved CAHPS® Hospice Survey vendors will submit data on the hospice's behalf to the CAHPS® Hospice Survey Data Center. The proposed deadlines for data submission occur quarterly and are shown in Table 9 below. Deadlines are final. No late submissions will be accepted. Hospice providers are responsible for making sure that their vendors are submitting data in a timely manner.

TABLE 10—DATA SUBMISSION DATES 2015–2016 FOR CAHPS® HOSPICE SURVEY

Sample months	Quarterly data submission deadlines
Dry Run (January–March 2015)	August 12, 2015.
Monthly data collection April–June 2015 (Q2)	November 1, 2015.
Monthly data collection July–September 2015 (Q3)	February 10, 2016.
Monthly data collection October–December 2015 (Q4)	May 11, 2016.

In the FY 2014 Hospice Wage Index and Rate Update final rule, we exempted very small hospices from CAHPS® Hospice Survey requirements. Hospices that have fewer than 50 survey-eligible deceased patients in the period from January 1, 2014 through December 31, 2014 will be exempt from CAHPS® Hospice Survey data collection and reporting requirements for the 2017 APU. To qualify for the survey exemption for FY 2017, hospices must submit an exemption request form. This form will be available on the CAHPS® Hospice Survey Web site (www.hospicecahpssurvey.org). Hospices are required to submit to CMS their total unique patient count for the period of January 1, 2014 through December 31, 2014. The due date for submitting the exemption request form is August 12, 2015.

c. Participation Requirements To Meet Quality Reporting Requirements for the FY 2018 APU

To meet participation requirements for the FY 2018 APU, we propose that hospices collect data on an ongoing monthly basis from January 2016 through December 2016 (inclusive). Data submission deadlines for the 2018 APU will be announced in future rulemaking.

We propose to exempt very small hospices. Hospices that have fewer than 50 deceased patients in the period from January 1, 2015 through December 31, 2015 will be exempt from CAHPS® Hospice Survey data collection and reporting requirements for the FY 2018 payment determination. To qualify, hospices must submit an exemption request form. This form will be available on the CAHPS® Hospice Survey Web site (*www.hospicecahpssurvey.org*). Hospices are required to submit to CMS their total unique patient count for the period of January 1, 2015 through December 31, 2015. The due date for submitting the exemption request form is August 10, 2016.

d. Vendor Participation Requirements for the 2017 APU

We have previously stated that CMS will train and approve vendors to administer CAHPS® Hospice Survey on behalf of hospices (78 FR 48233). In addition we stated that hospices will be required to contract with an approved survey vendor and to provide the sampling frame to the approved vendor on a monthly basis.

We propose that approved survey vendors must meet all of the minimum business requirements and follow the detailed technical specifications for survey administration as published in the CAHPS® Hospice Survey specifications manual, which will be posted on the Survey Web site. In addition, to the specifications manual, the Web site will include information and updates regarding survey implementation and technical assistance.

We propose to codify the CAHPS® Hospice Survey vendor requirements to be effective with the FY 2017 APU (as proposed in § 418.312). We propose that applicants that wish to become approved CAHPS® Hospice Survey vendors must have been in business for a minimum of 4 years and have conducted surveys for a minimum of 3 years using each the modes of survey administration for which they are applying. In addition the organization must have been conducting ''surveys with patients'' for at least 2 years immediately preceding the application to become a survey vendor for the CAHPS® Hospice Survey. For purposes of the approval process for CAHPS® Hospice Survey vendors, a ''survey of individual patients'' is defined as the collection of data from at least 600 individual patients selected by statistical sampling methods and the data collected are used for statistical purposes.

Vendors may not use home-based or virtual interviewers to conduct the CAHPS® Hospice Survey, nor may they conduct any survey administration processes (e.g. mailings) from a residence in order to ensure the confidentiality of data.

The following are examples of data collection activities would not satisfy the requirement of valid survey experience for approved vendors as defined for the CAHPS® Hospice Survey, and these would not be considered as part of the experience required of an approved vendor for CAHPS® Hospice Survey.

- Focus groups, cognitive interviews, or any other qualitative data collection activities;
- Surveys of fewer than 600 individuals;
- Surveys conducted that did not involve using statistical sampling methods;
- Internet or Web-based surveys; and
- Interactive Voice Recognition Surveys.

We also propose that no organization, firm, or business that owns, operates, or provides staffing for a hospice is permitted to administer its own Hospice CAHPS® survey or administer the survey on behalf of any other hospice in the capacity as a Hospice CAHPS® survey vendor. Such organizations will not be approved by CMS as CAHPS® Hospice Survey vendors.

e. Annual Payment Update

The Affordable Care Act requires that beginning with FY 2014 and each subsequent FY, the Secretary shall reduce the market basket update by 2 percentage points for any hospice that does not comply with the quality data submission requirements with respect to the FY, unless covered by specific exemptions. Any such reduction would not be cumulative and would not be taken into account in computing the payment amount for subsequent FYs. We propose to add the CAHPS® Hospice Survey to the Hospice Quality Reporting Program requirements for the FY 2017 payment determination and determinations for subsequent years.

- To meet the FY 2017 requirements, hospices will participate in a dry run for at least 1 month of the first quarter of CY 2015 (January 2015, February 2015, March 2015) and hospices must collect the survey data on a monthly basis for the months of April 1, 2015 through December 31, 2015 in order to qualify for the full APU.
- To meet the HQRP requirements for the FY 2018 payment determination, hospices would collect survey data on a monthly basis for the months of January 1, 2016 through December 31, 2016 in order to qualify for the full APU.

f. CAHPS® Hospice Survey Oversight Activities

We propose that vendors and hospice providers be required to participate in CAHPS® Hospice Survey oversight activities to ensure compliance with Hospice CAHPS® technical specifications and survey requirements. The purpose of the oversight activities is to ensure that hospices and approved survey vendors follow the CAHPS® Hospice Survey technical specifications and thereby ensure the comparability of CAHPS® Hospice Survey data across hospices.

We propose that the reconsiderations and appeals process for hospices that fail to meet the Hospice CAHPS® data collection requirements will be part of the Reconsideration and Appeals process already developed for the Hospice Quality Reporting program.

We encourage hospices interested in learning more about the CAHPS® Hospice Survey to visit the CAHPS® Hospice Survey Web site: *www.hospicecahpssurvey.org.* The launch date for this Web site will be announced at the Home Health, Hospice & Durable Medical Equipment Open Door Forum. We expect the Web site to be launched during the summer of 2014. You can contact CMS hospice team at *hospicesurvey@cms.hhs.gov.*

7. Procedures for Payment Year 2016 and Subsequent Years

In the FY 2014 Hospice Wage Index and Payment Rate Update final rule (78 FR 48267), we notified hospice providers of the opportunity to seek reconsideration of our initial non-compliance decision for the FY 2014 and FY 2015 payment determinations. We stated that we will notify hospices found to be non-compliant with the HQRP reporting requirements that they may be subject to the two percentage point reduction in their annual payment update. The process for filing a request for reconsideration is described on the CMS Web site at: *http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Hospice-Quality-Reporting/Reconsideration-Requests.html.* We propose to codify this process at § 418.312.

Finally, we also propose to codify at § 418.306 that beginning with FY 2014 and each subsequent FY, the Secretary shall reduce the market basket update by 2 percentage points for any hospice that does not comply with the quality data submission requirements with respect to that FY.

We invite public comment on all of the proposals in this section and the associated regulations text at § 418.312 and in § 418.306 in section VI.

I. Coordination of Benefits Process and Appeals for Part D Payment for Drugs While Beneficiaries Are Under a Hospice Election

The statutory definition of the term ''covered Part D drug'', as specified in section 1860D–2(e)(2)(B) of the Social Security Act, excludes a drug if payment for such a drug, as so prescribed and dispensed or administered with respect to a Part D eligible individual, is available (or would be available but for the application of a deductible) under Part A or B for that individual. Therefore, drugs and biologicals for which coverage is available under the Medicare Part A per-diem payment to a hospice program are excluded from coverage under Part D. Our previous understanding was that hospice coverage of drugs was very broad and very inclusive. Therefore, Part D payment for drugs furnished to hospice beneficiaries would be rare and the need for controls was not critical.

Section 1861(dd) of the Act states the hospice is responsible for covering all drugs or biologicals for the palliation and management of the terminal illness and related conditions. Our stated intention in the 1983 Hospice final rule (48 FR 56010) was that the hospice benefit provides virtually all care for the terminally ill individual. Despite our intention for a comprehensive and holistic benefit, claims data presented in section III.A.4 in this proposed rule shows that in 2012 there was over $1 billion in additional Medicare spending for beneficiaries during a hospice election. Gross covered drug costs under Part D for beneficiaries during a hospice election totaled $417.9 million. Of this total, Medicare reimbursed approximately $334.9 million, and beneficiaries contributed $48.2 million in possibly unnecessary cost-sharing. This suggests that hospice services are possibly being ''unbundled,'' resulting in duplicate costs to the Medicare program. To ensure that only costs for drugs that are unrelated to the terminal illness and related conditions are covered under Part D, we are considering defining ''terminal illness'' and ''related conditions'' in the regulations at § 418.3 (see section III.B for more information on the definitions we are considering).

CMS has previously issued a number of policy documents addressing our expectations concerning how Part D sponsors are to ensure that Part D drugs are provided only when those drugs are not covered under Part A or B as so prescribed and dispensed or administered for that individual. Since the hospice benefit was created with the expectation that virtually all care that is needed by the terminally ill patient and all drug needs at end of life would be covered by the hospice benefit, we believed that Part D coverage would be rare, and that hospices would make appropriate determinations consistent with the 1983 Hospice final rule (48 FR 56010 through 56011). Prior to the 2014 Final Call Letter, our guidance included an October 22, 2010 memorandum (titled, ''Preventing Part D Payment for Hospice Drugs) and a 2012 Call Letter (dated April 4, 2011 and available at *http://www.cms.gov/Medicare/Prescription-Drug-Coverage/PrescriptionDrugCovContra/Downloads/Announcement2012final.pdf*) instructing Part D sponsors that they should pay for drugs that may be covered under the hospice per-diem payment, and retrospectively determine payment responsibility (''pay and chase''). On June 28, 2012, the HHS Office of Inspector General (OIG) issued a final report documenting the findings of its review of Medicare payments for prescription drugs for beneficiaries who had elected hospice.[41] The OIG's review focused on four categories of drugs typically used to treat symptoms generally experienced by beneficiaries in hospice at end of life and concluded the Medicare program could be paying twice for prescription drugs for hospice beneficiaries. The OIG recommended that CMS require Part D sponsors to develop controls to prevent Part D payment for drugs included in the hospice per diem payments. Therefore, in the 2014 Call Letter, we stated that when a sponsor receives a Daily Transaction Reply Report (DTRR) from CMS showing a beneficiary has elected hospice, the sponsor must have controls in place to comply with the requirement that Part D does not pay for drugs and biologicals that can be covered under the Medicare Part A per-diem payment to a hospice. Although we strongly encouraged sponsors to place beneficiary-level prior authorization (PA) requirements on the four categories of prescription drugs identified by the OIG, including: analgesics, antinauseants (antiemetics), laxatives, and antianxiety drugs, we permitted sponsors to use other approaches, such as pay-and-chase, to resolve payment responsibility in these scenarios.

Following the issuance of this guidance, we received questions

[41] Office of the Inspector General, Department of Health and Human Services. Medicare Could be Paying Twice for Prescription Drugs for Beneficiaries in Hospice. June, 2012. A–06–10–00059.

indicating our policy statements were being misinterpreted by some parties. The hospice industry expressed uncertainty with the definitions of ''terminal condition'' and ''related conditions,'' and Part D sponsors were thus uncertain about whether payment should be the responsibility of either the hospice (Part A) or the plan (Part D). Therefore, on December 6, 2013, we issued a memorandum (titled, ''Part D Payment for Drugs for Beneficiaries Enrolled in Hospice'') providing clarified guidance for review and requesting comment on whether the industry's questions had been addressed. We received 130 comments, with many requesting that CMS undertake rulemaking to clarify for all parties what is, and is not, related to the terminal illness and related conditions, thereby providing the basis for clear criteria for determining payment responsibility between the hospice benefit and Part D. Therefore, we are considering defining ''terminal illness'' and ''related conditions'' (see section III.B of this proposed rule).

1. Part D Sponsor Coordination of Payment With Hospice Providers

Many commenters on the December 6, 2013 guidance also requested that CMS establish and require the use of standardized processes for determining payment responsibility, recovering payment when the wrong party has paid, and resolving disputes regarding payment responsibility. We agree with these commenters as well as those who suggested we seek stakeholder input. Thus, we are not proposing any requirements at this time, but are only soliciting comments on processes we are considering to facilitate the coordination of payment between Part D sponsors and hospices.

Specifically, we are considering amending § 423.464 by adding a new paragraph (i): ''Coordination with Medicare hospices,'' which would require that a Part D sponsor communicate and coordinate with Medicare hospices in determining coverage for drugs whenever a coverage determination process is initiated or a hospice furnishes information regarding a beneficiary's hospice election and/or drug profile. We are not considering establishing a requirement that the Part D sponsor initiate such communication and coordination. Rather, we are considering requiring that the Part D sponsor communicate and coordinate once the hospice initiates communication with the Part D sponsor to report information concerning a hospice election and/or drug profile, or the beneficiary or the beneficiary's appointed representative or the prescriber initiates a coverage determination request. In other words, a hospice may initiate the communication by reporting a beneficiary's hospice status, which would include the notice of election (NOE) or the notice of termination/revocation (NOTR). The hospice may also provide drug profile information, meaning identification of any drug that the hospice has determined is unrelated to the terminal illness or related conditions and an explanation of why the drug is unrelated. Hospices may identify a beneficiary's Part D plan by asking the beneficiary for the plan information on his or her member identification card or by requesting the hospice pharmacy submit a standard electronic eligibility transaction (that is, an E1) to the CMS Part D Transaction Facilitation contractor. The Facilitator will seek to match the beneficiary's identifying information on the E1 request to the contractor's Medicare Part D enrollment data. If a match is found, the transaction response will identify the Part D plan and provide on-line billing information and the sponsor's help desk telephone number.

To facilitate the communication and coordination, CMS reports hospice election information to Part D plan sponsors on the Daily Transaction Reply Report (DTRR). This information includes a hospice indicator, a hospice start date and a hospice termination date. Updated data are reported to reflect a new benefit period or a termination/revocation date. Because communication and coordination between the Part D sponsor and the hospice are necessary to determine coverage for drugs for beneficiaries who elect hospice, we expect that sponsors will promptly upload the DTRR data into their systems. As noted previously in CMS-issued Part D guidance, only a single hospice benefit period can be reported on the DTRR. As a result, sponsors need to store the hospice data in their systems so historical data are available when needed for claims adjudication and adjustments. Sponsors also can access additional hospice data via the Medicare Advantage and Prescription Drug system (MARx) User Interface, including the hospice provider number, prior benefit period start and end dates, and the hospice termination/revocation indicator.

Although we are proposing changes in this rule at section III.E that are expected to result in improvement to the timeliness of the CMS' reporting of the hospice election information, some time lag will remain in hospices filing their election information and plan sponsors' ability to access that information. One approach, recommended by hospice organizations, to address the time lag is to permit hospices to initiate communication with the beneficiary's Part D sponsor prior to a claim submission, such as at hospice election, to provide early notice of the election. When hospices provide this information, we are considering requiring Part D sponsors to accept it and use it to adjudicate requests for coverage until the official notice via the DTTR is received from CMS. We would expect sponsors to have processes in place to monitor receipt of the information from CMS and communicate with the hospice to resolve discrepancies between hospice-reported information and CMS-reported data.

We also are considering requiring that a Part D sponsor determine Part A versus Part D coverage at point-of-sale for any drugs for beneficiaries who have elected the hospice benefit as of the date the prescription is presented to be filled. By this we mean Part D sponsors would use HIPAA standard transactions to effectuate the Part D prior authorization requirement. The point of sale transaction related to Part A versus Part D coverage begins when a Part D sponsor receives a pharmacy claim for a beneficiary who has elected hospice, and rejects the claim with the following National Council for Prescription Drug Programs (NCPDP)-approved reject coding. Currently, this consists of: (1) reject code A3 ''This Product May Be Covered Under Hospice—Medicare A''; (2) reject code 75 ''Prior Authorization Required''; and (3) reject code 569 ''Provide Notice: Medicare Prescription Drug Coverage and Your Rights.'' In addition to the reject coding, sponsors would employ point-of-sale messaging that indicates a hospice is involved and that an explanation is needed that the drug is unrelated to the terminal illness and related conditions. The point-of-sale messaging must also include the 24-hour pharmacy help desk phone number to call with questions.

The beneficiary, the beneficiary's appointed representative, or the prescriber must contact the sponsor to initiate a coverage determination request which would require the plan sponsor to obtain information from the hospice provider that the drug is unrelated to the terminal illness and related conditions. The standardized pharmacy notice instructs the enrollee on how to contact his or her plan and explains an enrollee's right to receive, upon request, a coverage determination (including a detailed written decision) from the Part D sponsor regarding his or

her Part D prescription drug benefits. Part D sponsors must arrange with their network pharmacies (including mail-order and specialty pharmacies) to distribute the standardized notice.

After the Part D sponsor receives the coverage determination request and the PA process is initiated, the Part D sponsor would expect to receive either a verbal explanation or a completed PA form from the hospice within the timeframes proposed in this rule in § 418.305. Upon receiving either a verbal explanation of why the prescribed drug is unrelated to the beneficiary's terminal illness and related conditions or the completed PA form from the hospice, the Part D sponsor would be required to use the criteria described in the definitions of ''terminal illness'' and ''related conditions'', as we indicate we are considering in in this rule in section III.B, to determine whether the documentation establishes that the drug as prescribed and dispensed or administered is unrelated to the terminal illness and related conditions and, thus, satisfies the beneficiary-level hospice PA. If it does, the Part D sponsor would instruct the pharmacy on how to override the edit or provide coding to the pharmacy that would permit the claim transaction to process. Whenever an explanation of why the prescribed drug is unrelated to the beneficiary's terminal illness and related conditions is provided verbally, CMS is considering requiring the Part D sponsor to accurately document the date and content of the notice and explanation and to retain that documentation.

If the sponsor disagrees with the hospice's determination that the drug is unrelated to the terminal illness and related conditions, or determines that the documentation is insufficient to satisfy the beneficiary-level hospice PA, the Part D sponsor would initiate communication with the hospice and attempt to resolve the dispute. If the Part D sponsor and the hospice are unable to reach a resolution, the Part D sponsor may request a review by the independent review entity (IRE) we indicate in this rule we are considering.

Since the plan sponsor's decision about whether the PA is satisfied is a coverage determination, the Part D sponsor must notify the enrollee (and, if applicable, the prescriber) of its decision in accordance with the applicable adjudication timeframes and notice rules in Part 423, Subpart M. For example, if an enrollee, the enrollee's representative, or the prescriber's request is processed as an expedited coverage determination, the plan sponsor must provide notice of its decision as expeditiously as the enrollee's health condition requires, but no later than 24 hours after receiving the request or, for an exceptions request, the prescriber's supporting statement. If an appeal is requested following an adverse coverage determination decision, an expedited redetermination (plan level appeal) requires the plan to notify the enrollee (and prescriber, if appropriate) of the decision as expeditiously as the enrollee's health condition requires, but no later than 72 hours from receiving the request. The 72 hour expedited timeframe also applies to the IRE reconsideration level of review.

In those instances in which the Part D sponsor disagrees with the hospice's determination that the prescribed drug is unrelated to the terminal illness and related conditions, the denial notice would explain the Part D sponsor's intention to seek independent review of the hospice's determination, if applicable. Since Part D coverage of a drug depends on whether the drug is covered under the hospice benefit, if the hospice does not respond or refuses to provide the required explanation regarding why the drug is unrelated to the terminal illness and related conditions, Part A coverage cannot be ruled out and the PA would be unfulfilled.

In addition to providing early notice of a hospice election or termination/revocation, the hospice may identify any drugs determined to be coverable under Part D for a beneficiary and provide an explanation of why the drugs are unrelated to the terminal illness and related conditions. When the hospice furnishes the documentation to satisfy the PA, prior to a claim submission, we are considering requiring Part D sponsors to accept the information from the hospice either verbally or on the PA form. Once the information is received from the hospice provider, the Part D sponsor would determine whether it is sufficient to establish that the drug as prescribed and dispensed or administered is unrelated to the terminal illness and related conditions. If it does, the Part D sponsor would reflect that the PA is satisfied for this drug in their system. If the Part D sponsor determines that the explanation provided is unsatisfactory, the Part D sponsor would communicate this to the hospice. The Part D sponsor and hospice may attempt to resolve the coverage issue, but should they be unable to do so, the plan sponsor would be able to seek review by the IRE.

We also are considering requiring that a Part D sponsor process retrospective claims adjustments and issue requests for repayment and or refunds for drugs that are excluded from Part D by virtue of their being covered under the hospice benefit in accordance with the timeframes in § 423.466(a). The amount requested for repayment and subsequently repaid would be the total amount paid to the pharmacy, including the negotiated price for the drug paid by the Part D sponsor, the beneficiary cost sharing and any other payments made on the claim as reported by the sponsor on the prescription drug event record to CMS, such as the low-income subsidy and payments made by supplemental insurers. Under the process we are considering, the Part D sponsor would be responsible for refunding beneficiary cost-sharing as well as the amounts paid by supplemental payers on claims for which the sponsor received an NCPDP reporting (that is, N_X) transaction. The Part D sponsor would also be responsible for refunding amounts the hospice has paid to the pharmacy for drugs that should have been covered under Part D, including any beneficiary cost-sharing.

We believe that the definitions of ''terminal illness'' and ''related conditions'' in section III.B of this proposed rule would guide hospices, prescribers, and Part D sponsors by clarifying and strengthening the concepts of holistic and comprehensive hospice care. Thus, through a good faith effort, Part D sponsors and hospices would be able to resolve issues of payment responsibility for prescription drugs using the processes under consideration and outlined in this proposed rule.

While we expect the overwhelming preponderance of cases involving payment coverage responsibility to be resolved using the communication and coordination of benefits processes we are considering, we recognize that there may be some instances where the Part D sponsor and the hospice will be unable to agree on which entity is responsible for covering a prescription drug. Therefore, we are considering enabling the Part D sponsor to request review from the IRE that has contracted with CMS. As noted above, drugs available under Part A as prescribed and dispensed or administered are excluded by statute from coverage under Part D. We believe that the coverage exclusion set forth at section 1860D–2(e)(2)(B) of the Act provides CMS with the authority to implement a process whereby the Part D sponsor can request an independent review of a disagreement over payment responsibility with a Part A hospice. In addition, section 1860D–24 of the Act requires Part D sponsors to coordinate

with other drug plans, including with other health benefit plans or programs that provide coverage or financial assistance for the purchase or provision of prescription drug coverage on behalf of Part D eligible individuals. We believe these statutory provisions support the coordination and independent review processes being considered, as these processes would help ensure that payment responsibility is properly determined and that drugs are not being inappropriately covered and paid for by the Part D program.

The independent review process considered would be made part of the regulations at 42 CFR Part 423, Subpart J, given the nexus between the coordination of benefits processes considered for inclusion at § 423.464(i) and the right to request an independent review if the Part D sponsor disagrees with the information provided by the hospice or prescriber. Under the provisions being considered, the Part D sponsor would have to communicate and coordinate with Medicare hospices in determining coverage for prescription drugs. As part of this process, the hospice would be required to furnish information regarding why the drug is unrelated to the terminal illness and related conditions to satisfy the beneficiary-level hospice prior authorization (PA) requirements. The independent review process we are considering would be separate and distinct from the enrollee appeals process and would not affect the rights of an enrollee, the enrollee's representative or the enrollee's prescriber to request an appeal under the administrative appeal provisions set forth in 42 CFR Part 423, subpart M and subpart U.

The changes we are considering at § 423.464(i)(4) would enable the Part D sponsor to request an independent review if the hospice has furnished information as part of the coordination of benefits and PA process indicating that the drug is not a covered drug under the Part A hospice benefit, and the Part D sponsor disagrees with that determination. To satisfy the beneficiary-level hospice PA requirement, the hospice would be required to notify the Part D sponsor, verbally or in writing, of the determination as to whether the need for the prescription drug is related to the beneficiary's terminal illness and related conditions and provide a clinical explanation to support that determination. If the need for the drug is unrelated to the beneficiary's terminal illness and related conditions, the drug may be covered under Part D. If the Part D sponsor disagrees with the hospice or prescriber's explanation, the Part D sponsor would have the right to file a written request for review with the IRE within 5 calendar days of the date of notice provided by the hospice or prescriber. If the hospice or prescriber provides verbal notice of its determination, we are considering requiring the Part D sponsor to accurately document the date and content of the notice and explanation and retain that documentation. We believe that 5 calendar days (from the date the hospice provider furnishes notice to the plan sponsor that the drug is unrelated to the beneficiary's terminal illness and related conditions) would be a reasonable period of time for the hospice provider and plan sponsor to attempt to resolve any disagreement over payment responsibility via the coordination processes being considered. In the interest of promptly resolving disputes over payment responsibility, we do not believe a longer timeframe for requesting IRE review would be appropriate, but solicit comments on this 5 calendar day timeframe.

We are considering requiring that the written request for independent review include relevant clinical documentation and the explanation provided by the hospice. The IRE would be responsible for obtaining any additional information it believes is necessary to determine whether the disputed drug is the payment responsibility of the hospice or the Part D sponsor. The IRE would notify the hospice (and prescriber, as appropriate), the Part D sponsor, and the enrollee of its decision in writing. The IRE's decision would be binding on the Part D sponsor and the hospice. Decisions made through this review would not be subject to appeal, but could be reviewed and revised at the discretion of CMS. We are considering a corresponding change at 418.305(b) specifying the hospice would be bound by the decision made by the IRE under the change being considered at 423.464(i). If the IRE review process we are considering were to be proposed and finalized through future rulemaking, additional guidance related to the IRE's review, such as adjudication timeframes and specific notice requirements, would be established in manual guidance or rulemaking.

The following chart summarizes the existing and new requirements under consideration for Part D sponsor coordination with hospices:

Process	Timeframes
Communication/Coordination:	
Part D sponsors would be required to communicate and coordinate with a hospice when: • The hospice furnishes information regarding a beneficiary's hospice election or plan of care; and • The Part D coverage determination process is initiated.	A hospice would be able to furnish information to the Part D sponsor at any time. This communication/coordination process would begin when the beneficiary, the beneficiary's appointed representative or the prescriber requests a coverage determination.
Prior Authorization:	
Part D sponsors would implement beneficiary-level hospice PAs and NCPDP reject coding at point-of-sale (POS) for drugs for beneficiaries who have elected hospice. When a claim rejects at POS, the beneficiary would be provided with a notice explaining the right to request a coverage determination from the plan.	When a coverage determination is requested, sponsors would be required to comply with the existing timeframes of 72 hours for standard requests and 24 hours for expedited requests, as specified in Federal regulation at § 423.568 and § 423.572 respectively.
Payment Recovery:	
When a Part D sponsor has paid for drugs prior to receiving notification of the beneficiary's hospice election, the sponsor would be required to determine payment responsibility for the drugs, process retrospective claims adjustments, and issue refunds or recovery requests.	Once payment responsibility is determined, the sponsor would be required to process any adjustments and issue refunds or recovery notices within 45 days, as specified in Federal regulations at § 423.466(a).
Independent Review:	

Process	Timeframes
If a sponsor disagrees with a hospice determination that a drug is unrelated, the sponsor would be able to request an IRE review. IRE decisions would be binding on the sponsor and hospice.	Sponsors would be required to request an IRE review within 5 business days of receiving the hospice's explanation of why a drug is unrelated and not covered under the hospice benefit.

In formulating the requirements under consideration, we have become aware that the regulatory requirement for a Part D sponsor to coordinate with other health benefit plans or programs at § 423.464 (f)(1)(ix) is narrower than the requirement specified in statute. Section 1860D–24 of the Act requires Part D sponsors to coordinate with other drug plans, including, as specified in paragraph § 423.464 (b)(5), with other health benefit plans or programs that provide coverage or financial assistance for the purchase or provision of prescription drug coverage on behalf of Part D eligible individuals. However, in codifying this requirement in the regulations at § 423.464(f)(1)(ix), we specified that the other plans or programs are those that provide coverage or financial assistance for the purchase of or provision *of Part D* (emphasis added) prescription drugs. As a result, the regulation does not include the requirement for Part D sponsors to coordinate with providers of drugs covered under Part A, such as hospices, since as noted above, drugs covered as so prescribed and dispensed or administered under Part A are excluded from the definition of a covered Part D drug. Since coordination between Part D sponsors and the Medicare hospices is essential to ensure Part D statutory coverage requirements are met, to reduce the potential for erroneous payment under Part D, and to facilitate the recovery of erroneous payments when they do occur, we also are considering amending the Part D regulations at § 423.464(f) to align the definition of other prescription drug coverage in paragraph § 423.464(f)(1)(ix) with the statute by removing the phrase ''Part D.''

We solicit comments on the changes under consideration regarding the coordination of benefits process and appeals for Part D payment for drugs while beneficiaries are under a hospice election.

2. Hospice Coordination of Payment With Part D Sponsors and Other Payers

As specified in section 1861(dd) of the Act, and in regulation at 42 CFR Part 418, the hospice is responsible for covering all drugs and biologicals for the palliation and management of the terminal illness and related conditions. As noted in 418.202(f), drugs and biologicals for palliation of pain and symptom management are included in the Medicare Part A per-diem payment to a hospice. Therefore, such drugs and biologicals are excluded from coverage under Part D (see section III.I.1). Additionally, our payment regulations at § 418.200 require that, to be covered, hospice services must be consistent with the plan of care, which must include the drugs and treatment necessary to meet the needs of the patient (§ 418.56(c)(2)).

We have received anecdotal reports from Medicare hospice beneficiaries that they are not receiving medications related to their terminal illness and related conditions from their hospice because, among other stated reasons, those medications are not on the hospice's formulary. These reports also have stated that hospice beneficiaries were advised to obtain drugs related to the terminal illness and related conditions from their Part D prescription drug plans. Per the regulations at § 418.202(f), hospices must provide all drugs which are reasonable and necessary to meet the needs of the patient in order to provide palliation and symptom management of the terminal illness and related conditions. If the drugs on the hospice formulary are not providing the relief needed, then the hospice must provide alternatives in order to relieve pain and symptoms, even if it means providing drugs that are not on their formularies.

In addition, several hospices have stated that pre-existing, chronic and/or controlled conditions are not related to the prognosis of the hospice beneficiary and should not be the responsibility of the hospice—a concept which is contrary to the hospice philosophy of providing comprehensive coordinated care to patients at end of life as described in sections II and III.B of this proposed rule. One hospice illustrated the issue with an example, a patient that was admitted with a primary terminal diagnosis of COPD. In the example, the patient also has diabetes which predates the COPD; the patient uses corticosteroids to manage the COPD. The diabetes is well managed with an oral hypoglycemic agent and the patient needs to continue the medication to manage the diabetes. The hospice argues that since the diabetes is unrelated to the COPD, the oral hypoglycemic agent medication should not be covered by hospice. However, increased glucose levels are a common manifestation of corticosteroid use. While the hospice states that the admission to hospice is a result of COPD, treatment for the COPD has the potential to affect glucose levels, and hence the hypoglycemic agent would be covered by the hospice and not through Part D. As we stated above, and as required by § 418.202(f), hospices are to cover all drugs which are reasonable and necessary to meet the needs of the patient in order to provide palliation and symptom management of the individual's terminal illness and related conditions. Treatment decisions should not be driven by costs, as opposed to clinical appropriateness. Hospices should use thoughtful clinical judgment, with a patient-centered focus, when developing the hospice plan of care, including the recommendations for medication management.

As outlined in section III.A.4, $1.2 billion in non-hospice Medicare spending and beneficiary cost-sharing occurred in CY 2012 for beneficiaries in hospice elections. In addition, we examined drug costs incurred by hospices from 2004 to 2012 using hospice cost report data adjusted to constant 2010 dollars. That analysis revealed a declining trend in the drug costs per patient-day, with costs declining from a mean of $20 per patient-day in 2004 to $11 per patient-day in 2012. As of 2010, MedPAC reports that the aggregate hospice Medicare margin was 7.5 percent, up from 7.4 percent in 2009. Margins varied widely across the sector. For example, MedPAC reports that the Medicare margins were 19.9 percent at the 75th percentile.[42] This may suggest that some hospices could be unbundling items, services, and drugs included in the per-diem hospice payments they are receiving, and other parts of the Medicare program are being billed for services that the hospice should have provided. For example, during a hospice election hospice beneficiaries have received care and/or services from hospitals, laboratories, DME suppliers, non-hospice clinicians, which were billed to Medicare as being unrelated to the terminal illness and related conditions. We believe that most of these claims were likely related to the

[42] MedPAC ''Report to the Congress: Medicare Payment Policy'', March 2013, pp.278.

hospice terminal illness and related conditions.

To safeguard the integrity of the Medicare Trust Funds and encourage hospices to coordinate with other providers and payers, and to ensure that beneficiaries have access to needed services and medications, we are considering how hospices can coordinate with Part D plan sponsors and comply with a standardized process for determining payment responsibility (prior authorization (PA) process), for recovering payment when the wrong party has paid, and for resolving disputes regarding payment responsibility. We are not proposing any requirements at this time, but are soliciting comments on approaches to these issues.

Currently, the CoPs at § 418.56(e)(5) require hospices to share information with other non-hospice healthcare providers furnishing services unrelated to the terminal illness and related conditions. As described in § 418.100(c)(2), hospices must be available 24 hours a day and 7 days a week to address beneficiary and family needs. We expect that any PA process would result in minimal disruption to access to the drugs presumed to be unrelated to the terminal illness or related conditions. It would be vital for the hospice to provide information to respond to a PA as soon as possible to minimize any potential disruption to the medication needs of the beneficiary. We believe the information necessary to satisfy a request from any payer or non-hospice provider would be readily available, since hospices are required to maintain clinical records per the regulations at § 418.104. We expect the beneficiary's needs for drugs and biologicals at the end of life would be addressed as soon as possible to maximize quality of care and access to critical drugs and biologicals. We are soliciting comments on whether hospices need to determine, in a specific amount of time, a beneficiary's drug and biological needs and communicate with the Part D plan sponsor or to the other payer and/or provider, verbally or in writing, to ensure there is no lapse of reasonable and necessary drugs and biologicals or other items or services for the beneficiary. We are particularly interested in the experiences of Part D sponsors and hospices that successfully communicate with each other and how both parties ensured that the beneficiary did not experience any delay in drug coverage. While the solicitation of comments is focused on coordination between the hospice and Part D sponsor, the solicitation would apply broadly to any payer or non-hospice provider.

The PA process described in Section III.I.1 would be a mechanism that would emphasize the recognition of the hospice and hospice physician as the clinical point of contact and enable the hospice and hospice physician to better maintain the professional and clinical responsibility for hospice patients. Hospices are health care leaders in coordinating care for beneficiaries at the end of life, and thus we believe this solicitation fits well within a hospice's usual care paradigm. The solicitations outlined, above in section III.I.1, could ensure that hospices and hospice physicians are notified of any beneficiary medications prescribed by a non-hospice provider, as well as non-hospice care the beneficiary has initiated without the hospice's knowledge.

We are also soliciting comments on the steps hospices should take to reconcile payment responsibility within a specified timeframe that could be similar to an established timeframe set forth in Part 423, Subpart M, which also requires that payment responsibility be resolved within 45 days. We are soliciting comments on whether the determination of payment responsibility should be resolved within 45 days from the date of receipt of a repayment request from either the Part D plan sponsor or the hospice. We are soliciting comments on whether the hospice would issue a request for a refund from the other payer or provider for the total amount paid for the item or service within a specific timeframe and refund to the beneficiary any associated cost-sharing.

As described in section III.I.1, we believe a majority of cases involving payment coverage responsibility could be resolved under the communication and coordination of benefits process. However, we recognize that there may be instances where the hospice and the Part D sponsor will be unable to agree on which entity is responsible for the prescription drug. We are soliciting comments on the impact to hospices regarding the potential independent review process described in section III.I.1.

3. Beneficiary Rights and Appeals

Sometimes a beneficiary requests a certain medication that a hospice cannot or will not provide because the hospice has deemed that the specific medication is not reasonable and necessary for the palliation and management of the terminal illness and related conditions. Coverage of such medication would not be permissible under Part D coverage since the medication is not for any condition completely separate and distinct from the terminal illness and related conditions, nor is it covered under Part A since it is not reasonable and necessary for the palliation and management of the terminal illness and related conditions. If the hospice does not provide the medication, the hospice is not obligated to provide any notice of non-coverage (including the Advance Beneficiary Notice of Non-coverage or ABN). If the hospice provides medication it believes is not reasonable and necessary for the palliation and management of the terminal illness and related conditions, the hospice must first issue an ABN in order to charge the beneficiary for the cost of such medication. Regardless of whether or not the hospice furnishes the drug, if the beneficiary independently obtains the drug, but believes that the Medicare hospice should have furnished or covered the cost of the drug as part of the hospice benefit, the beneficiary may submit a claim for the medication directly to Medicare on Form CMS–1490S (*http://www.cms.gov/Medicare/CMS-Forms/CMS-Forms/CMS-Forms-Items/CMS012949.html*). If the claim is denied, the beneficiary may file an appeal of that determination under the appeals process set forth in part 405, subpart I.

Beneficiaries who disagree with such medication coverage determinations may use the Medicare fee-for-service appeals process if the determination relates to Part A or B coverage, and the Part D appeals process if the determination relates to Part D coverage.

There may also be instances where a beneficiary prefers a non-formulary drug because, for example, he or she believes it to be more efficacious than the formulary drug prescribed by the hospice. In such instances, the hospice may have determined that the formulary drug prescribed is reasonable and necessary for the palliation and management of the terminal illness and related conditions; however, the beneficiary may prefer another brand of such drug that is off formulary, which the hospice believes is not reasonable and necessary, or more expensive but no more effective than the drug in the formulary. In those cases, the beneficiary may submit quality of care complaints to a Quality Improvement Organization. We plan to increase our beneficiary outreach efforts to advise beneficiaries and their families/caregivers of their rights and the available appeals process described in this section.

J. Update on the International Classification of Diseases, 10th Revision, Clinical Modification (ICD–10–CM) and Coding Guidelines for Hospice Claims Reporting

3. International Classification of Diseases, 10th Revision, Clinical Modification (ICD–10–CM)

On April 1, 2014, the Protecting Access to Medicare Act of 2014 (PAMA) (Pub. L. 113–93), was enacted. Section 212 of PAMA, titled ''Delay in Transition from ICD–9 to ICD–10 Code Sets,'' provides that ''[t]he Secretary of Health and Human Services may not, prior to October 1, 2015, adopt ICD–10 code sets as the standard for code sets under section 1173(c) of the Social Security Act (42 U.S.C. 1320d–2(c)) and section 162.1002 of title 45, Code of Federal Regulations.'' As of now, the Secretary has not implemented this provision under HIPAA. This means that ICD–9–CM diagnosis codes will continue to be used for hospice claims reporting until an implementation date for ICD–10–CM is announced. Diagnosis reporting on hospice claims must adhere to ICD–9–CM coding conventions and guidelines regarding the selection of principal diagnosis and the reporting of additional diagnoses. Additionally, the CMS' Hospice Claims Processing manual (Pub 100–04, chapter 11) requires that hospice claims include the reporting of additional/other diagnoses as required by ICD–9–CM coding guidelines.

In the HIPAA regulations at 45 CFR 162.1002, the Secretary adopted the ICD–9–CM code set, including the Official ICD–9–CM Guidelines for Coding and Reporting. The current ICD–9–CM Coding Guidelines use the International Classification of Diseases, 9th Revision, Clinical Modification (ICD–9–CM) and are available through the CMS Web site at: *http://www.cms.gov/Medicare/Coding/ICD9ProviderDiagnosticCodes/index.html* or on the CDC's Web site at *http://www.cdc.gov/nchs/icd/icd9cm.htm.*

4. Coding Guidelines for Hospice Claims Reporting

In the FY 2014 Hospice Wage Index and Payment Rate Update, we reiterated that diagnosis reporting on hospice claims should include the appropriate selection of principal diagnoses as well as the other, additional and coexisting diagnoses related to the terminal illness and related conditions (78 FR 48254). Additionally, in the July 27, 2012, FY 2013 Hospice Wage Index notice (77 FR 44247), we provided in-depth information regarding longstanding, existing ICD–9–CM Coding Guidelines. We also discussed related versus unrelated diagnosis reporting on claims and clarified that ''all of a patient's coexisting or additional diagnoses'' related to the terminal illness and related conditions should be reported on the hospice claim. The expectation was that hospices would report all diagnoses related to the terminal illness and related conditions on hospice claims to provide accurate information regarding the hospice beneficiaries for which they are providing hospice services.

In the FY 2014 Hospice Wage Index and Payment Rate Update final rule, we stated that beginning on October 1, 2014, any claims with ''debility'' or ''adult failure to thrive'' in the principal diagnosis field will be returned to the provider for more definitive coding (78 FR48252). ''Debility'' and ''adult failure to thrive'' do not provide enough information to accurately describe Medicare hospice beneficiaries and the conditions that hospices are managing. Once these claims are resubmitted with more appropriate diagnosis codes, following the ICD–9–CM Coding Guidelines, these claims will be processed accordingly. This is a reminder that claims with ''debility'' and ''adult failure to thrive'' coded in the principal diagnosis field will be returned to providers for more definitive coding effective October 1, 2014 (for those claims submitted on and after October 1, 2014).

Also in the FY 2014 Hospice Wage Index and Payment Rate Update final rule, we advised hospice providers to pay particular attention to dementia diagnoses which are found under two separate ICD–9–CM classifications: ''Mental, Behavioral, and Neurodevelopmental Disorders'' and ''Diseases of the Nervous System and Sense Organs''(78 FR48252–48253). Many of the codes relating to dementia manifestations found under the ICD–9–CM classification, ''Mental, Behavioral, and Neurodevelopmental Disorders'', are not appropriate as principal diagnoses because of etiology/manifestation guidelines or sequencing conventions under the ICD–9–CM Coding Guidelines. ICD–9–CM Coding Guidelines for this classification state that dementia is most commonly a secondary manifestation of an underlying causal condition. Codes found under this classification identify the common behavioral disturbances of dementia manifestations. Many of the dementia codes under the ICD–9–CM classification, ''Mental, Behavioral and Neurodevelopmental Disorders'' have coding conventions that require to code first the associated neurological condition. Many of the associated neurological conditions can be found under the classification, ''Diseases of the Nervous System'', including such conditions as ''Alzheimer's disease'' and ''Senile Degeneration of the Brain''. We advise hospices to pay close attention to the various coding and sequencing conventions found within The Official ICD–9–CM Guidelines for Coding and Reporting when reporting diagnoses on hospice claims.

To ensure additional compliance with ICD–9–CM Coding Guidelines we will implement certain edits from Medicare Code Editor (MCE), which detect and report errors in the coding of claims data, for all hospice claims effective October 1, 2014 (for those claims submitted on or after October 1, 2014). Hospice claims containing inappropriate principal or secondary diagnosis codes, per ICD–9–CM coding conventions and guidelines, will be returned to the provider and will have to be corrected and resubmitted to be processed and paid.

We will implement edits related to etiology/manifestation code pairs from the MCE; therefore, it is important for hospice providers to follow the ICD–9–CM Coding Guidelines regarding codes that fall under this coding convention. The etiology/manifestation coding convention states that there are certain conditions which have both an underlying cause (etiology) and subsequent multiple body system manifestations. For such conditions, ICD–9–CM coding convention requires the underlying condition be sequenced first, followed by the manifestation. Whenever such a combination exists, there is a ''use additional code'' note at the etiology code and a ''code first'' note at the manifestation code. These instructional notes indicate the proper sequencing order of the codes. In most cases, the manifestation codes will have in the code title, ''in diseases classified elsewhere.'' ''In diseases classified elsewhere'' codes are never permitted to be used as first-listed or principal diagnosis codes. They must be used in conjunction with an underlying condition code and they must be listed following the underlying condition. An example of this can be found under the category 294, ''Persistent mental disorders due to conditions classified elsewhere.'' However, there are manifestation codes that do not have ''in diseases classified elsewhere'' in the title. For such codes, there is ''use an additional code'' note at the etiology code and a ''code first'' note at the manifestation code and the rules for sequencing apply.

There are sequencing conventions under ICD–9–CM coding guidelines that are not accounted for in the MCE edits. There are several dementia codes under the classification, ''Mental Behavioral and Neurodevelopmental Disorders'' that have a sequencing convention that require the underlying physiological condition to be coded first, but for which there is no edit in the MCE. We will be issuing technical guidance through a Change Request to include these codes for edits in the MCE to be consistent for claims processing under ICD–9–CM Coding Guidelines. We are reminding providers to utilize the ICD–9–CM coding guidelines when submitting hospice claims to ensure they are following the appropriate guidelines for coding so that claims are not returned to providers as a result of MCE edits. Following the ICD–9–CM coding guidelines will help hospice providers with appropriate code selection for hospice claims processing. This is not to say that hospice beneficiaries with various dementia conditions are not appropriate for hospice services, rather, this is merely a clarification regarding the ICD–9–CM coding guidelines for claims processing. We expect hospice providers to follow ICD–9–CM coding guidelines to ensure that the most accurate information is provided regarding the patients for whom hospices are providing services.

Additional details describing the specific MCE edits that will be applied will be announced through a change request, an accompanying Medicare Learning Network article, and other CMS communication channels, such as the Home Health, Hospice, and DME Open Door Forum.

We have clarified in previous rules that hospice providers are expected to report on hospice claims all ICD–9–CM codes to provide an accurate description of the patients' conditions. In the Hospice Wage Index for Fiscal Year 2013 (77FR 44247) and again in the Hospice Wage Index for Fiscal Year 2014 (78 FR 48240), we reminded providers to follow ICD–9–CM Coding Guidelines for reporting diagnoses on hospice claims. HIPAA, federal regulations, and the Medicare claims processing manual all require that ICD–9–CM Coding Guidelines be applied to the coding and reporting of diagnoses on hospice claims. In the FY 2013 hospice notice, we reported that our analyses showed that 77.2 percent of hospice claims from 2010 only reported a single, principal diagnosis. We provided in-depth information regarding longstanding, existing ICD–9–CM Coding Guidelines that require the reporting of all additional or co-existing diagnoses on hospice claims. We went on to state that coexisting or additional diagnoses could be related or unrelated to the hospice patient's terminal illness. As the Medicare hospice benefit covers hospice services for the palliation and management of the terminal illness and related conditions, we said, at that time, that hospice providers ''should report on hospice claims all coexisting or additional diagnoses that are related to the terminal illness; they should not report coexisting or additional diagnoses that are unrelated to the terminal illness'' (77FR 44248). We also stated that we do not believe that requiring reporting of coexisting or additional diagnoses that are related to the terminal illness would create a burden for hospice and that some providers already report these diagnoses on their claims.

In the FY 2014 Hospice Wage Index and Payment Rate Update final rule, we reported that for the first quarter of FY 2013 (October 1, 2012 through December 31, 2012) 72 percent of hospice claims only reported a single, principal diagnosis (78 FR 48240). We also discussed related versus unrelated diagnosis reporting on claims and clarified that ''all of a patient's coexisting or additional diagnoses'' related to the terminal illness or related conditions should be reported on the hospice claim. Information on a patient's related and unrelated diagnoses should already be included as part of the hospice comprehensive assessment and appropriate interventions should be incorporated into the patient's plan of care, as determined by the hospice IDG.

Analysis conducted on FY 2013 hospice claims shows that 67 percent of hospice claims still only report a single, principal hospice diagnosis.[43] Though this is a trend in the right direction, there still appears to be some confusion by the majority of hospice providers as to the requirements for diagnosis reporting on hospice claims. We are reminding providers to follow the ICD–9–CM Coding Guidelines, per longstanding policy, in regard to diagnosis reporting on claims.

The ICD–9–CM Official Guidelines for Coding and Reporting state that for accurate reporting of ICD–9–CM diagnosis codes, ''The documentation should describe the patient's condition, using terminology which includes specific diagnoses, as well as symptoms, problems, and reasons for the encounter. List first the ICD–9–CM code for the diagnosis, condition, problem, or other reason for the encounter/visit shown in the medical record to be chiefly responsible for services provided.'' The coding guidelines also state to code all documented conditions that coexist at the time of the encounter/visit and require or affect patient care treatment or management. Therefore, this is a reminder that all diagnoses should be reported on the hospice claim for the terminal illness and related conditions, including those that can affect the care and management of the beneficiary. We will condition to monitor hospice claims to see if all conditions are being reported as required by ICD–9–CM Coding Guidelines.

[43] FY 2013 hospice claims data from the Chronic Conditions Data Warehouse (CCW) accessed on February 26, 2014.

K. Technical Regulatory Text Change

We propose to make at technical correction in § 418.3 to delete the definition for ''social worker.'' This definition is no longer accurate, and we intended to remove it as part of the June 5, 2008 final rule that amended the conditions of participation (CoPs) for hospices (73 FR 32088). The 2008 final rule established new requirements for social workers at § 418.114(b)(3), making the definition of ''social worker'' at § 418.3 obsolete. However, the technical amendatory language included in the 2008 final rule did not instruct the **Federal Register** to delete the ''social worker'' definition. We propose this technical correction in order to remedy this oversight.

We invite comments on this technical correction and associated change in the regulations at § 418.3 in section VI.

IV. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of these issues for this section of this document that contains information collection requirements (ICRs). This section includes ICR information on data collection A) related to hospice payment policy, including proposed changes to the election statement and proposed changes to inpatient and aggregate cap determination reporting; and B) related to the CAHPS® Hospice Survey.

A. Proposed Changes Related to Hospice Payment Policy

Sections A.1, A.2, and A.3 are associated with the information collection request (ICR) previously approved under OMB control number as 0938–1067. We are currently seeking to have the ICR reinstated under notice and comment periods separate from those associated with this notice of proposed rulemaking. The following assumptions were used in estimating the burden for the proposed changes related to hospice payment policy:

TABLE 10—HOSPICE PAYMENT POLICY BURDEN ESTIMATE ASSUMPTIONS

# of Medicare-participating hospices nationwide, CY 2012	3,897
# of Medicare-billing hospices, from CY 2012 claims	3,727
# of Part D prescriptions per hospice, from CY 2012 claims	481
Hourly rate of registered nurse	$41
Hourly rate of accountant	$40
Hourly rate of office employee	$17
Hourly rate of administrator	$63

Note: CY = Calendar year.

All salary information is from the Bureau of Labor Statistics (BLS) Web site at *http://www.bls.gov/oes/current/naics4_621600.htm* and includes a fringe benefits package worth 30 percent of the base salary. Hourly rates are based on May 2012 BLS data for each discipline, for those providing ''home health care services.''

1. Proposed Changes to the Election Statement (§ 418.24)

Section 1812(d) of the Act requires that patients elect hospice care in order for Medicare to cover and pay for hospice services. Section 1861(dd)(3)(B) of the Act defines an attending physician and requires that the patient, not the hospice, designate an attending physician at the time of election. Our regulations at § 418.24 outline current requirements for completion of a hospice election statement, but do not require that the attending physician designated by the patient be identified. To safeguard the patient's right to choose his or her attending physician, we proposed to change our regulations at § 418.24(b) to require that the election statement be modified to identify the attending physician chosen by the patient and to include language that the patient acknowledges that the attending physician was his or her choice. Note that all hospices, including those that are not Medicare-participating, are required by the Conditions of Participation to have patients elect hospice care.

We estimated that the burden for this requirement is the one-time burden to modify the election statement to include a place for identifying the attending physician and acknowledging that he or she was chosen by the patient or representative. Hospices are currently required to explain these processes to patients, so we do not believe there is any additional burden for discussing that part of the election statement with patients or their representatives. We estimate that it would take a hospice clerical staff person 20 minutes (20/60 = 0.33333 hours) to modify the election form, and the hospice administrator 15 minutes (15/60 = 0.25 hours) to review the revised form. The clerical time plus administrator time equals a one-time burden of 35 minutes or (35/60) = 0.58333 hours per hospice; for all 3,897 hospices, the total time required would be (0.58333 × 3,897) = 2,273 hours. At $17 per hour for an office employee, the cost per hospice would be (0.33333 × $17) = $5.66. At $63 per hour for the administrator's time, the cost per hospice would be (0.25 × $63) = $15.75. Therefore, the total one-time cost per hospice would be $21.41, and the total one-time cost for all hospices would be ($21.41 × 3,897) = $83,435.

Because of concerns related to the potential inappropriate changing of attending physicians by hospices, we also proposed to add paragraph (f) to our regulations at § 418.24, to require that the patient (or representative) provide a statement identifying the new attending physician and the date the change is to be effective, and that the patient (or representative) sign and date the form. The form should also include an acknowledgement that this change is the patient's choice. The one-time burden to hospices is the time to develop a form for the patient to use. We estimate that it would take a hospice clerical staff person 20 minutes (20/60 = 0.33333 hours) to develop this form, and the hospice administrator 15 minutes (15/60 = 0.25 hours) to review the new form. The clerical time plus administrator time equals a one-time burden of 35 minutes or (35/60) = 0.58333 hours per hospice; for all 3,897 hospices, the total time required would be (0.58333 × 3,897) = 2,273 hours. At $17 per hour for an office employee, the cost per hospice would be (0.33333 × $17) = $5.66. At $63 per hour for the administrator's time, the cost per hospice would be (0.25 × $63) = $15.75. Therefore, the total one-time cost per hospice to develop this new form for changing attending physicians would be $21.41, and the total one-time cost for all hospices would be ($21.41 × 3,897) = $83,435.

2. Proposed Changes to Inpatient and Aggregate Cap Determination Reporting (§ 418.308)

Congress mandated two caps on hospice payments: an inpatient cap and an aggregate cap. The hospice cap year is November 1 through October 31. Medicare contractors complete the hospice cap determination approximately twelve to eighteen months after the cap year in order to demand any overpayments from the hospices. A cap determination consists in determining whether a hospice exceeds the inpatient cap and the aggregate hospice cap. Medicare hospice inpatient stays in excess of twenty percent of total Medicare hospice days are to be reimbursed at the routine homecare rate; the hospice must be repay any excess due to receiving payments at the higher inpatient rates for the excess inpatient days. Additionally, Medicare hospice payments are limited by an aggregate cap, which is computed by multiplying the ''cap amount'' by the number of beneficiaries. If the actual Medicare payments exceed the aggregate cap, the hospice must repay the difference. We are proposing to change our regulations as § 418.308(c) to require hospices to

calculate their inpatient and aggregate caps five months after the cap year and remit any overpayment. This is similar to the process in § 413.24(f), which requires other provider types that file a Medicare cost report to file their cost reports five months after the end of their cost reporting year. The regulation at § 413.24(f) also requires other provider types that file a Medicare cost report to remit any amount due the program at the time of the cost report filing. Although hospices file cost reports, the cap determination is not based on the cost report; the hospice caps serve to limit total Medicare payments similar to the way cost reports limit those payments for other provider types that file a Medicare cost report. Requiring hospices to complete a cap determination and remit any overpayment is consistent with what is currently required of all other provider types that file a Medicare cost report.

We expect that it would take a hospice about 1.5 hours to complete its cap determination. All information needed to file the cap determination is available in the Provider Statistical and Reimbursement (PS&R) system. For all 3,727 hospices that bill Medicare, this would be (1.5 × 3,727) = 5,591 hours. We estimate that it would take one hour for an accountant to complete the cap determination worksheet provided by CMS for the cap year. At $40 per hour for an accountant, the cost would be (1 × $40) = $40 per hospice, and (3,727 × $40) = $149,080 for all hospices. We estimate that it would take a half hour for the administrator to review the worksheet prepared by the accountant. At $63 per hour for the administrator's time, the cost per hospice would be (0.5 × $63) = $31.50, and for all hospices would be (3,727 × $31.50) = $117,401. Therefore the total estimated cost per hospice would be ($40 + $31.50) = $71.50, and the total cost for all hospices would be (3,727 × $71.50) = $266,481.

C. CAHPS® Hospice Survey

This section is associated with a new information collection request that is required to start in January 2015. The Hospice Survey data collected in 2015 is required for the FY 2017 HQRP quality reporting requirements along with the submission of the clinical structural measures for the same payment period. This is a new information collection request seeking approval to assess experiences of care with hospice reported by primary caregivers (i.e., bereaved family members of friends) of patients who died while receiving hospice care. This information data collection request are required to (1) assess experience of care at the respondent (caregiver) level, and (2) provide sufficient response to generate hospice experience reports.

Here are the estimates for the approximate annual cost of the CAHPS® Survey (Table 11).

TABLE 11—ASSUMPTIONS AND ESTIMATES FOR CAHPS® HOSPICE SURVEY

Approximate # of hospices required to do the CAHPS® Survey annually	2,600.
Approximate Cost to each hospice annually for the CAHPS® Survey	$3,300.
Approximate Cost for all CAHPS® Hospices annually for the CAHPS® Survey	$8.5 million.
Respondent Cost burden	$3.8 million.
Approximate Total Cost of CAHPS® Survey annually	$12.3 million.

In implementing the HQRP, we seek to collect measure information with as little burden to the providers as possible, but which reflects the full spectrum of quality performance. As such, we are moving forward toward the implementation of the CAHPS® Hospice Survey to provide data to the public about the patients' families' and friends' perspectives of care of their loved ones who passed way while in hospices.

The CAHPS® Hospice Survey data will provide the peoples' voices to hospice care in the United States. Based on the criteria outlined in the Preamble, some hospices that are too new and very small will be exempt from the HQRP. We estimate that 2,600 hospices will qualify to participate in the survey. From CMS experiences with surveys, we estimate an annual cost of $3,300 per hospice to participate in the CAHPS® Hospice Survey. The cost of $3,300 includes the preparation of a monthly sampling frame for their approved vendor, as well as estimated vendor costs to conduct the data collection. The estimated annual cost for all hospices to do the survey is $8.5 million. As part of the survey requirement, all participating hospices will contract with an approved hospice survey vendor, and each hospice will be required to submit a monthly list of deceased patients' caregivers contact information, for patients that passed away in the hospice care two months prior to the date of the list. This list (essentially the sampling frame) for most hospices can be generated from existing databases with minimal effort. For some small hospices, preparation of a monthly sample frame may require more time. However, data elements needed on the sample frame will be kept at a minimum to reduce the burden on the hospices.

The survey contains 47 items and is estimated to require an average administration time of 10.4 minutes in English, and 12.5 minutes in Spanish, for an average response time of 10.505 minutes or 0.175 hours, assuming that 5 percent of the survey respondents complete the survey in Spanish. These burden estimates are based on CMS' experiences with surveys of similar lengths that were fielded with Medicare beneficiaries. We estimate that approximately six surveys can be done an hour, at an hourly wage of $22.77. With a total estimate of 550,000 respondents, we estimate a total respondent burden at $3.8 million. This cost is not an additional cost to the hospices; the cost to the participating hospices is $8.5 million.

Table 12 below provides a summary of the burden and cost estimates associated with both the hospice payment policy changes and the CAHPS® Hospice Survey requirements.

TABLE 12—BURDEN AND COST ESTIMATES ASSOCIATED WITH ALL INFORMATION COLLECTION REQUIREMENTS

Regulation section(s)	OMB Control No.	Number of respondents	Number of responses	Burden per response (hours)	Total annual burden (hours)	Hourly labor cost of reporting ($)	Total labor cost of reporting ($)	Total cost ($)
418.24(b)	0938–1067	3,897	3,897	0.583333	2,273	$21.41	$83,435	$83,435
418.24(f)	0938–1067	3,897	3,897	0.583333	2,273	21.41	83,435	83,435

TABLE 12—BURDEN AND COST ESTIMATES ASSOCIATED WITH ALL INFORMATION COLLECTION REQUIREMENTS—Continued

Regulation section(s)	OMB Control No.	Number of respondents	Number of responses	Burden per response (hours)	Total annual burden (hours)	Hourly labor cost of reporting ($)	Total labor cost of reporting ($)	Total cost ($)
418.308(c)	0938–1067	3,727	3,727	1.500000	5,591	71.50	266,481	266,481
418.312	0938—New	1,100,000	550,000	0.175	95,029.55	22.77	2,163,823	2,163,823
Totals		1,107,624	561,521		105,167		2,597,174	2,597,174

There are no capital/maintenance costs associated with the information collection requirements contained in this rule; therefore, we have removed the associated column from Table 13.

If you comment on these information collection and recordkeeping requirements, please submit your comments electronically as specified in the **ADDRESSES** section of this proposed rule.

Please identify which Collection of Information requirement you are commenting on by indicating whether it is from subsection:

- A.1. Proposed Changes to the Election Statement (§ 418.24);
- A.2. Proposed Changes to Inpatient and Aggregate Cap Determination Reporting (§ 418.308); or
- B. CAHPS® Hospice Survey (§ 418.312).

V. Regulatory Impact Analysis

A. Statement of Need

This proposed rule follows § 418.306(c) which requires annual issuance, in the **Federal Register**, of the hospice wage index based on the most current available CMS hospital wage data, including any changes to the definitions of Core-Based Statistical Areas (CBSAs), or previously used Metropolitan Statistical Areas (MSAs). This proposed rule also updates payment rates for each of the categories of hospice care described in § 418.302(b) for FY 2015as required under section 1814(i)(1)(C)(ii)(VII) of the Act. The payment rate updates are subject to changes in economy-wide productivity as specified in section 1886(b)(3)(B)(xi)(II) of the Act. In addition, the payment rate updates may be reduced by an additional 0.3 percentage point (although for FY 2014 to FY 2019, the potential 0.3 percentage point reduction is subject to suspension under conditions specified in section 1814(i)(1)(C)(v) of the Act). In 2010, the Congress amended section 1814(i)(6) of the Act with section 3132(a) of the Affordable Care Act. The amendment authorized the Secretary to collect additional data and information determined appropriate to revise payments for hospice care and for other purposes. The data collected may be used to revise the methodology for determining the payment rates for routine home care and other services included in hospice care, no earlier than October 1, 2013, as described in section 1814(i)(6)(D) of the Act. In accordance with section 1814(i)(6)(D) of the Act, this proposed rule provides an update on hospice payment reform analysis.

This proposed rule also proposes that, in accordance with section 1814(i)(2)(A) through (C), that providers complete their hospice aggregate cap determination within 5 months after the cap year ends and remit any overpayments at that time. Furthermore, in accordance with section 1860D–24 of the Act, drugs and biologicals that may be covered under the Medicare Part A per-diem payment to a hospice program are excluded from coverage under Part D. Section 1861(dd) of the Act states the hospice is responsible for covering all drugs or biologicals for the palliation and management of the terminal illness and related conditions. This proposed rule, in accordance with sections 1860D–24 and 1861(dd) of the Act, solicits comments on a coordination of benefits process and appeals for Part D payment for drugs and biologicals while beneficiaries are under a hospice election. At this time, we are not making any proposals on the coordination of benefits process and appeals for Part D payment for drugs and biologicals while beneficiaries are under a hospice election.

Finally, section 3004 of the Affordable Care Act amended the Act to authorize a quality reporting program for hospices and this rule discusses changes in the requirements for the hospice quality reporting program in accordance with section 1814(i)(5) of the Act.

B. Introduction

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Act, section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA, March 22, 1995; Pub. L. 104–4), and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This proposed rule has been designated as economically significant under section 3(f)(1) of Executive Order 12866 and thus a major rule under the Congressional Review Act. Accordingly, we have prepared a regulatory impact analysis (RIA), that to the best of our ability, presents the costs and benefits of the rulemaking. Finally, this rule has been reviewed by OMB.

C. Overall Impact

The overall impact of this proposed rule is an estimated net increase in Federal payments to hospices of $230 million, or 1.3 percent, for FY 2015. This estimated impact on hospices is a result of the proposed hospice payment update percentage for FY 2015 of 2.0 percent and changes to the FY 2015 hospice wage index, including a reduction to the BNAF by an additional 15 percent, for a total BNAF reduction of 85 percent (10 percent in FY 2010, and 15 percent per year for FY 2011 through FY 2015). An 85 percent reduced BNAF is computed to be 0.009309 (or 0.9309 percent). The BNAF reduction is part of a 7-year BNAF

phase-out that was finalized in the FY 2010 Hospice Wage Index final rule (74 FR 39384), and is not a policy change.

1. Detailed Economic Analysis

Column 4 of Table 13 shows the combined effects of the updated wage data (the 2013 pre-floor, pre-reclassified hospital wage index) and of the additional 15 percent reduction in the BNAF (for a total BNAF reduction of 85 percent), comparing estimated payments for FY 2014 to estimated payments for FY 2015. The FY 2014 payments used for comparison have a 70 percent reduced BNAF applied. We estimate that the total hospice payments for FY 2015 would decrease by 0.7 percent. This 0.7 percent is the result of a 0.1 percent reduction due to the use of updated wage data ($ − 20 million), and a 0.6 percent reduction due to the additional 15 percent reduction in the BNAF ($ − 110 million). This estimate does not take into account the proposed hospice payment update percentage of 2.0 percent (+$360 million) for FY 2015.

Column 5 of Table 13 shows the combined effects of the updated wage data (the 2013 pre-floor, pre-reclassified hospital wage index), the additional 15 percent reduction in the BNAF (for a total BNAF reduction of 85 percent), and the proposed hospice payment update percentage of 2.0 percent. The proposed 2.0 percent hospice payment update percentage is based on a 2.7 percent estimated inpatient hospital market basket update for FY 2015 reduced by a 0.4 percentage point productivity adjustment and by 0.3 percentage point as mandated by the Affordable Care Act. The estimated effect of the 2.0 percent proposed hospice payment update percentage is an increase in payments to hospices of approximately $360 million. Taking into account the 2.0 percent proposed hospice payment update percentage (+$360 million), the use of updated wage data ($ − 20 million), and the additional 15 percent reduction in the BNAF ($ − 110 million), it is estimated that hospice payments would increase by $230 million in FY 2015 ($360 million − $20 million − $110 million = $230 million) or 1.3 percent in FY 2015.

a. Effects on Hospices

This section discusses the impact of the projected effects of the hospice wage index and the effects of a proposed 2.0 percent hospice payment update percentage for FY 2015. This proposed rule continues to use the CBSA-based pre-floor, pre-reclassified hospital wage index as a basis for the hospice wage index and continues to use the same policies for treatment of areas (rural and urban) without hospital wage data. The proposed FY 2015 hospice wage index is based upon the FY 2013 pre-floor, pre-reclassified hospital wage index and the most complete hospice claims data available (FY 2013 hospice claims submitted as of December 31, 2013) with an additional 15 percent reduction in the BNAF (for a total BNAF reduction of 85 percent).

For the purposes of our impacts, our baseline is estimated FY 2014 payments with a 70 percent BNAF reduction, using the FY 2012 pre-floor, pre-reclassified hospital wage index. Our first comparison (column 3 of Table 13) compares our baseline to estimated FY 2015 payments (holding payment rates constant) using the updated wage data (FY 2013 pre-floor, pre-reclassified hospital wage index). Consequently, the estimated effects illustrated in column 3 of Table 13 show the distributional effects of the updated wage data only. The effects of using the updated wage data combined with the additional 15 percent reduction in the BNAF are illustrated in column 4 of Table 13.

We have included a comparison of the combined effects of the additional 15 percent BNAF reduction, the updated wage data, and the proposed 2.0 percent hospice payment update percentage for FY 2015 (Table 13, column 5). Presenting these data gives the hospice industry a more complete picture of the effects on their total revenue based on changes to the hospice wage index and the BNAF phase-out as discussed in this proposed rule and the proposed FY 2015 hospice payment update percentage. Certain events may limit the scope or accuracy of our impact analysis, because such an analysis is susceptible to forecasting errors due to other changes in the forecasted impact time period. The nature of the Medicare program is such that the changes may interact, and the complexity of the interaction of these changes could make it difficult to predict accurately the full scope of the impact upon hospices.

TABLE 13—ANTICIPATED IMPACT ON MEDICARE HOSPICE PAYMENTS OF UPDATING THE PRE-FLOOR, PRE-RECLASSIFIED HOSPITAL WAGE INDEX DATA, REDUCING THE BUDGET NEUTRALITY ADJUSTMENT FACTOR (BNAF) BY AN ADDITIONAL 15 PERCENT (FOR A TOTAL BNAF REDUCTION OF 85 PERCENT) AND APPLYING A 2.0 PERCENT HOSPICE PAYMENT UPDATE PERCENTAGE, COMPARED TO THE FY 2014 HOSPICE WAGE INDEX WITH A 70 PERCENT BNAF REDUCTION

	Number of hospices	Number of routine home care days in thousands	Percent change in hospice payments due to FY2014 wage index change	Percent change in hospice payments due to wage index change, additional 15 reduction in budget neutrality adjustment	Percent change in hospice payments due to wage index change, additional 15 reduction in budget neutrality adjustment and market basket update
	(1)	(2)	(3)	(4)	(5)
ALL HOSPICES	3,702	87,456	−0.1	−0.7	1.3
URBAN HOSPICES	2,736	76,784	−0.1	−0.7	1.3
RURAL HOSPICES	966	10,672	−0.2	−0.5	1.5
BY REGION—URBAN:					
NEW ENGLAND	128	2,771	0.0	−0.7	1.3
MIDDLE ATLANTIC	252	7,880	0.5	−0.1	1.9
SOUTH ATLANTIC	388	16,778	−0.6	−1.2	0.8
EAST NORTH CENTRAL	358	11,949	−0.1	−0.8	1.2
EAST SOUTH CENTRAL	156	4,467	−0.3	−0.7	1.2

TABLE 13—ANTICIPATED IMPACT ON MEDICARE HOSPICE PAYMENTS OF UPDATING THE PRE-FLOOR, PRE-RECLASSIFIED HOSPITAL WAGE INDEX DATA, REDUCING THE BUDGET NEUTRALITY ADJUSTMENT FACTOR (BNAF) BY AN ADDITIONAL 15 PERCENT (FOR A TOTAL BNAF REDUCTION OF 85 PERCENT) AND APPLYING A 2.0 PERCENT HOSPICE PAYMENT UPDATE PERCENTAGE, COMPARED TO THE FY 2014 HOSPICE WAGE INDEX WITH A 70 PERCENT BNAF REDUCTION—Continued

	Number of hospices	Number of routine home care days in thousands	Percent change in hospice payments due to FY2014 wage index change	Percent change in hospice payments due to wage index change, additional 15 reduction in budget neutrality adjustment	Percent change in hospice payments due to wage index change, additional 15 reduction in budget neutrality adjustment and market basket update
	(1)	(2)	(3)	(4)	(5)
WEST NORTH CENTRAL	209	4,775	−0.8	−1.4	0.5
WEST SOUTH CENTRAL	545	10,402	−0.2	−0.8	1.2
MOUNTAIN	276	6,596	−0.3	−0.9	1.1
PACIFIC	389	9,964	0.9	0.2	2.2
OUTLYING	35	1,201	0.7	0.7	2.7
BY REGION—RURAL:					
NEW ENGLAND	24	236	−0.1	−0.7	1.3
MIDDLE ATLANTIC	44	567	0.3	−0.3	1.7
SOUTH ATLANTIC	136	2,308	−0.6	−1.0	1.0
EAST NORTH CENTRAL	137	1,763	−0.7	−1.3	0.7
EAST SOUTH CENTRAL	131	1,888	0.0	0.0	2.0
WEST NORTH CENTRAL	180	1,190	0.4	−0.1	1.9
WEST SOUTH CENTRAL	172	1,526	−0.3	−0.3	1.7
MOUNTAIN	94	681	0.5	0.1	2.1
PACIFIC	47	500	0.8	0.1	2.1
OUTLYING	1	13	0.0	0.0	2.0
BY SIZE/DAYS:					
0–3499 DAYS (small)	631	1,113	0.1	−0.4	1.6
3500–19,999 DAYS (medium)	1795	18,345	0.0	−0.5	1.5
20,000+ DAYS (large)	1276	67,998	−0.1	−0.7	1.3
TYPE OF OWNERSHIP:					
VOLUNTARY	1042	29,537	0.0	−0.6	1.4
PROPRIETARY	2142	48,415	−0.1	−0.7	1.3
GOVERNMENT	518	9,505	−0.2	−0.7	1.3
HOSPICE BASE:					
FREESTANDING	2734	72,437	−0.1	−0.7	1.3
HOME HEALTH AGENCY	502	9,435	0.1	−0.5	1.5
HOSPITAL	445	5,345	0.2	−0.4	1.6
SKILLED NURSING FACILITY	21	238	0.2	−0.4	1.6

Source: FY 2013 Hospice claims data from the Standard Analytic Files for CY 2012 (as of June 30, 2013) and CY 2013 (as of December 31, 2013).

Note: The proposed 2.0 percent hospice payment update percentage for FY 2015 is based on an estimated 2.7 percent inpatient hospital market basket update, reduced by a 0.4 percentage point productivity adjustment and by 0.3 percentage point. Starting with FY 2013 (and in subsequent fiscal years), the market basket percentage update under the hospice payment system as described in section 1814(i)(1)(C)(ii)(VII) or section 1814(i)(1)(C)(iii) of the Act will be annually reduced by changes in economy-wide productivity as set out at section 1886(b)(3)(B)(xi)(II) of the Act. In FY 2013 through FY 2019, the market basket percentage update under the hospice payment system will be reduced by an additional 0.3 percentage point (although for FY 2014 to FY 2019, the potential 0.3 percentage point reduction is subject to suspension under conditions set out under section 1814(i)(1)(C)(v) of the Act).

REGION KEY:

New England=Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont; Middle Atlantic=Pennsylvania, New Jersey, New York; South Atlantic=Delaware, District of Columbia, Florida, Georgia, Maryland, North Carolina, South Carolina, Virginia, West Virginia; East North Central=Illinois, Indiana, Michigan, Ohio, Wisconsin; East South Central=Alabama, Kentucky, Mississippi, Tennessee; West North Central=Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota; West South Central=Arkansas, Louisiana, Oklahoma, Texas; Mountain=Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, Wyoming; Pacific=Alaska, California, Hawaii, Oregon, Washington; Outlying=Guam, Puerto Rico, Virgin Islands.

Table 13 shows the results of our analysis. In column 1, we indicate the number of hospices included in our analysis as of December 31, 2013, which had also filed claims in FY 2013. In column 2, we indicate the number of routine home care days that were included in our analysis, although the analysis was performed on all types of hospice care. Columns 3, 4, and 5 compare FY 2014 estimated payments with those estimated for FY 2015. The estimated FY 2014 payments incorporate a BNAF, which has been reduced by 70 percent. Column 3 shows the percentage change in estimated Medicare payments for FY 2015 due to the effects of the updated wage data only, compared with estimated FY 2014 payments. The effect of the updated wage data can vary from region to region

depending on the fluctuations in the wage index values of the pre-floor, pre-reclassified hospital wage index. Column 4 shows the percentage change in estimated hospice payments from FY 2014 to FY 2015 due to the combined effects of using the updated wage data and reducing the BNAF by an additional 15 percent. Column 5 shows the percentage change in estimated hospice payments from FY 2014 to FY 2015 due to the combined effects of using updated wage data, an additional 15 percent BNAF reduction, and the proposed 2.0 percent hospice payment update percentage.

The impact of changes in this proposed rule has been analyzed according to the type of hospice, geographic location, type of ownership, hospice base, and size. Table 13 categorizes hospices by various geographic and hospice characteristics. The first row of data displays the aggregate result of the impact for all Medicare-certified hospices. The second and third rows of the table categorize hospices according to their geographic location (urban and rural). Our analysis indicated that there are 2,736 hospices located in urban areas and 966 hospices located in rural areas. The next two row groupings in the table indicate the number of hospices by census region, also broken down by urban and rural hospices. The next grouping shows the impact on hospices based on the size of the hospice's program. We determined that the majority of hospice payments are made at the routine home care rate. Therefore, we based the size of each individual hospice's program on the number of routine home care days provided in FY 2013. The next grouping shows the impact on hospices by type of ownership. The final grouping shows the impact on hospices defined by whether they are provider-based or freestanding.

As indicated in column 1 of Table 13, there are 3,702 hospices included in the regulatory impact analysis. Approximately 42.1 percent of Medicare-certified hospices are identified as voluntary (non-profit) or government agencies; a majority (57.9 percent) are proprietary (for-profit), with 1,560 designated as non-profit or government hospices, and 2,142 as proprietary. In addition, our analysis shows that most hospices are in urban areas and provide the vast majority of routine home care days, most hospices are medium-sized, and the vast majority of hospices are freestanding.

b. Hospice Size

Under the Medicare hospice benefit, hospices can provide four different levels of care. The majority of the days provided by a hospice are routine home care (RHC) days, representing about 97 percent of the services provided by a hospice. Therefore, the number of RHC days can be used as a proxy for the size of the hospice, that is, the more days of care provided, the larger the hospice. We currently use three size designations to present the impact analyses. The three categories are—(1) small agencies having 0 to 3,499 RHC days; (2) medium agencies having 3,500 to 19,999 RHC days; and (3) large agencies having 20,000 or more RHC days. The FY 2015 updated wage data before any BNAF reduction are anticipated to decrease payments to large hospices by 0.1 percent, and increase 0.1 for small hospices. Medium hospices payment would stay stable (column 3). The updated wage data and the additional 15 percent BNAF reduction (for a total BNAF reduction of 85 percent) are anticipated to decrease estimated payments to small hospices by 0.4 percent, to medium hospices by 0.5 percent, and to large hospices by 0.7 percent (column 4). Finally, the updated wage data, the additional 15 percent BNAF reduction (for a total BNAF reduction of 85 percent), and the proposed 2.0 percent hospice payment update percentage are projected to increase estimated payments by 1.6 percent for small hospices, by 1.5 percent for medium hospices, and by 1.3 percent for large hospices (column 5).

c. Geographic Location

Column 3 of Table 13 shows the estimated impact of using updated wage data without the BNAF reduction. Urban hospices are anticipated to experience a decrease of 0.1 percent and rural hospices are anticipated to experience a decrease of 0.2 percent in payments. Urban hospices can anticipate an increase in payments in Middle Atlantic of 0.5 percent, in the Pacific of 0.9 percent and in the Outlying area of 0.7 percent. Urban hospices can anticipate a decrease in payments ranging from 0.8 percent in the West North Central region to 0.1 percent in the East North Central region. Urban hospices in New England are not anticipated to be affected by the updated wage data.

Rural hospices are estimated to see a decrease in payments in four regions, ranging from 0.7 percent in the East North Central region to 0.1 percent in the New England region. Rural hospices can anticipate an increase in payments in four regions ranging from 0.3 percent in the Middle Atlantic region to 0.8 percent in the Pacific region. There is no anticipated change in payments for Outlying regions due to the use of updated wage data.

Column 4 shows the combined effect of the updated wage data and the additional 15 percent BNAF reduction on estimated payments, as compared to the FY 2014 estimated payments using a BNAF with a 70 percent reduction. Overall, hospices are anticipated to experience a 0.7 percent decrease in payments, with urban hospices experiencing an estimated decrease of 0.7 percent and rural hospices experiencing an estimated decrease of 0.5 percent. All urban areas other than Outlying and Pacific are estimated to see decreases in payments, ranging from 1.4 percent in the West North Central region to 0.7 percent in the New England and East South Central region. Rural hospices are estimated to experience a decrease in payments in six regions, ranging from 1.3 percent in the East North Central region to 0.1 percent in the West North Central region. Payments in the Outlying and East South Central regions are anticipated to stay relatively stable.

Column 5 shows the combined effects of the updated wage data, the additional 15 percent BNAF reduction, and the proposed 2.0 percent hospice payment update percentage on estimated FY 2015 payments as compared to estimated FY 2014 payments. Overall, hospices are anticipated to experience a 1.3 percent increase in payments, with urban hospices anticipated to experience a 1.3 percent increase in payments, and rural hospices anticipated to experience a 1.5 percent increase in payments. Urban hospices are anticipated to experience an increase in estimated payments in every region, ranging from 0.5 percent in the West North Central region to 2.2 percent in Outlying area. Rural hospices in every region are estimated to see an increase in payments ranging from 0.7 percent in East North Central to 2.1 percent in the Mountain and Pacific regions.

d. Type of Ownership

Column 3 demonstrates the effect of the updated wage data on FY 2015 estimated payments, versus FY 2014 estimated payments. We anticipate that using the updated wage data would decrease estimated payments to proprietary (for-profit) and Government hospices by 0.1 percent and 0.2 percent, respectively. Voluntary (non-profit) hospices are expected to have no change in payments. Column 4 demonstrates the combined effects of the updated wage data and of the additional 15 percent BNAF reduction. Estimated payments to voluntary (non-profit),

proprietary (for-profit) and government hospices are anticipated to decrease by 0.6 percent, 0.7 percent and 0.7 percent, respectively. Column 5 shows the combined effects of the updated wage data, the additional 15 percent BNAF reduction (for a total BNAF reduction of 85 percent), and the proposed 2.0 percent hospice payment update percentage on estimated payments, comparing FY 2015 to FY 2014. Estimated FY 2015 payments are anticipated to increase for voluntary (non-profit) hospices by 1.4 percent, for proprietary (for-profit) hospices by 1.3 percent, and government hospices by 1.3 percent.

e. Hospice Base

Column 3 demonstrates the effect of using the updated wage data, comparing estimated payments for FY 2015 to FY 2014. Estimated payments are anticipated to decrease for freestanding hospices by 0.1 percent. Estimated payments are anticipated to increase for Home Health Agency, hospital and Skilled Nursing Facility based hospices by 0.1 percent, 0.2 percent, and by 0.2 percent, respectively. Column 4 shows the combined effects of the updated wage data and reducing the BNAF by an additional 15 percent, comparing estimated payments for FY 2015 to FY 2014. All hospice facilities are anticipated to experience decrease in payments ranging from 0.7 percent for freestanding hospices to 0.4 percent for hospital and skilled nursing facility based hospices. Column 5 shows the combined effects of the updated wage data, the additional 15 percent BNAF reduction, and the proposed 2.0 percent hospice payment update percentage on estimated payments, comparing FY 2015 to FY 2014. Estimated payments are anticipated to increase for all hospices, ranging from 1.3 percent for freestanding hospices to 1.6 percent for hospital and skilled nursing facility based hospices.

f. Effects on Other Providers

This proposed rule would only affect Medicare hospices, and therefore has no effect on other provider types. We note that our suggested approaches with respect to Part D coordination with hospice payments may ultimately have an effect on Part D spending, if proposed and adopted.

g. Effects on the Medicare and Medicaid Programs

This proposed rule only affects Medicare hospices, and therefore has no effect on Medicaid programs. As described previously, estimated Medicare payments to hospices in FY 2015 are anticipated to decrease by $20 million due to the update in the wage index data, and to decrease by $110 million due to the additional 15 percent reduction in the BNAF (for a total 85 percent reduction in the BNAF). However, the proposed hospice payment update percentage of 2.0 percent is anticipated to increase Medicare payments by $360 million. Therefore, the total effect on Medicare hospice payments is estimated to be a $230 million increase (1.3 percent).

h. Alternatives Considered

In continuing the reduction to the BNAF by an additional 15 percent, for a total BNAF reduction of 85 percent (10 percent in FY 2010, and 15 percent per year for FY 2011 through FY 2015), and implementing the hospice payment update percentage and the updated wage index, the aggregate impact will be a net increase of $230 million in payments to hospices. In the proposed rule for FY 2015, we did not consider discontinuing the additional 15 percent reduction to the BNAF as the 7-year phase-out of the BNAF was finalized in the FY 2010 Hospice Wage Index final rule (74 FR 39384). However, if we were to discontinue the reduction to the BNAF by an additional 15 percent, Medicare would pay an estimated $110 million more to hospices in FY 2015.

Since the hospice payment update percentage is determined based on statutory requirements, we did not consider not updating hospice payment rates by the payment update percentage. The proposed 2.0 percent hospice payment update percentage for FY 2015 is based on a proposed 2.7 percent inpatient hospital market basket update for FY 2015, reduced by a 0.4 percentage point productivity adjustment and by an additional 0.3 percentage point. Payment rates for FYs since 2002 have been updated according to section 1814(i)(1)(C)(ii)(VII) of the Act, which states that the update to the payment rates for subsequent FYs must be the market basket percentage for that FY. The Act requires us to use the inpatient hospital market basket to determine the hospice payment rate update. In addition, section 3401(g) of the Affordable Care Act mandates that, starting with FY 2013 (and in subsequent FYs), the hospice payment update percentage will be annually reduced by changes in economy-wide productivity as specified in section 1886(b)(3)(B)(xi)(II) of the Act. In addition, section 3401(g) of the Affordable Care Act also mandates that in FY 2013 through FY 2019, the hospice payment update percentage will be reduced by an additional 0.3 percentage point (although for FY 2014 to FY 2019, the potential 0.3 percentage point reduction is subject to suspension under conditions specified in section 1814(i)(1)(C)(v) of the Act).

We also considered proposing a waiver of the consequences for not filing the NOE within 3 calendar days after the effective date of election, to account for exceptional circumstances. However, since hospices are to operate 24 hours a day, 7 days a week, and should have back-up systems in place so that they can care for their patients without interruption, we did not believe that this would be necessary.

To ensure the attending physician of record is properly documented in the patient's medical record, we proposed, in section III.F, to amend the regulations at § 418.24(b)(1) and require the election statement to include the patient's choice of attending physician. We considered limiting the number of times that a beneficiary can change his/her attending to once per election period (similar to the current regulations at § 418.30(a) that only allows a beneficiary to change a hospice provider once during an election period). However, we first want to conduct additional analyses of hospice Part A billing for physician services provided by nurse practitioners and Part B attending physician billing to determine how frequently beneficiaries change attending physicians.

i. Accounting Statement

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf*), in Table 14 below, we have prepared an accounting statement showing the classification of the expenditures associated with this proposed rule. Table 14 provides our best estimate of the increase in Medicare payments under the hospice benefit as a result of the changes presented in this proposed rule for 3,702 hospices in our impact analysis file constructed using FY 2013 claims as of December 31, 2013. Table 14 also includes the costs associated with (1) a hospice accountant to complete the cap determination worksheet, and for a hospice administrator to review the final worksheet, for a total annual burden of $266,481 as proposed in section III.D; and (2) the cost to hospices to participate in the CAHPS® survey, including the preparation of a monthly sampling frame for their approved vendor, as well as estimated survey vendor costs, for an estimated total annual cost of $8.5 million to all hospices in the survey. Table 14 below does not reflect a one-time cost of modifying the current hospice election

statement to record the patient's choice of attending physician ($83,435) and the one-time cost of creating a new hospice form for changing the attending physician ($83,435), for a total one-time burden of $166,870 as proposed in section III.E.

TABLE 14—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED TRANSFERS, FROM FY 2014 TO FY 2015

[In $millions]

Category	Transfers
FY 2015 Hospice Wage Index and Payment Rate Update	
Annualized Monetized Transfers.	$230.
From Whom to Whom?	Federal Government to Hospices.
Category	Costs
Annualized Monetized Costs for Hospice Providers[1]	$8.77.

[1] Costs associated with hospice cap reporting and with the CAHPS® Hospice Survey.

j. Conclusion

In conclusion, the overall effect of this proposed rule is an estimated $230 million increase in Medicare payments to hospices due to the wage index changes (including the additional 15 percent reduction in the BNAF) and the proposed hospice payment update percentage of 2.0 percent. Also, starting in FY 2015, hospices are estimated to incur annual burden costs of $266,481 for a hospice accountant to complete the cap determination worksheet, and for a hospice administrator to review the final worksheet. Finally, starting in FY 2015 hospices are estimated to incur annual burden costs of $8.5 million for participation in the CAHPS® hospice survey.

2. Regulatory Flexibility Act Analysis

The RFA requires agencies to analyze options for regulatory relief of small businesses if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, we estimate that almost all hospices are small entities as that term is used in the RFA. The great majority of hospitals and most other health care providers and suppliers are small entities by meeting the Small Business Administration (SBA) definition of a small business (in the service sector, having revenues of less than $7.0 million to $35.5 million in any 1 year), or being nonprofit organizations. While the SBA does not define a size threshold in terms of annual revenues for hospices, it does define one for home health agencies ($14 million; see *http://www.sba.gov/sites/default/files/files/Size_Standards_Table(1).pdf*). For the purposes of this proposed rule, because the hospice benefit is a home-based benefit, we are applying the SBA definition of ''small'' for home health agencies to hospices; we will use this definition of ''small'' in determining if this proposed rule has a significant impact on a substantial number of small entities (for example, hospices). We estimate that 95 percent of hospices have Medicare revenues below $14 million or are nonprofit organizations and therefore are considered small entities.

HHS's practice in interpreting the RFA is to consider effects economically ''significant'' only if they reach a threshold of 3 to 5 percent or more of total revenue or total costs. As noted above, the combined effect of the updated wage data, the additional 15 percent BNAF reduction, and the proposed FY 2015 hospice payment update percentage of 2.0 percent results in an increase in estimated hospice payments of 1.3 percent for FY 2015. For small and medium hospices (as defined by routine home care days), the estimated effects on revenue when accounting for the updated wage data, the additional 15 percent BNAF reduction, and the proposed FY 2015 hospice payment update percentage reflect increases in payments of 1.6 percent and 1.5 percent, respectively. Therefore, the Secretary has determined that this proposed rule will not create a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. This proposed rule only affects hospices. Therefore, the Secretary has determined that this proposed rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

3. Unfunded Mandates Reform Act Analysis

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2014, that threshold is approximately $141 million. This proposed rule is not anticipated to have an effect on State, local, or tribal governments, in the aggregate, or on the private sector of $141 million or more.

VI. Federalism Analysis and Regulations Text

Executive Order 13132 on Federalism (August 4, 1999) establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this proposed rule under the threshold criteria of Executive Order 13132, Federalism, and have determined that it will not have substantial direct effects on the rights, roles, and responsibilities of States, local or tribal governments.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 418

Health facilities, Hospice care, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare and Medicaid Services proposes to amend 42 CFR chapter IV as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

■ 1. The authority citation for part 405, subpart C continues to read:

Authority: Secs. 1102, 1815, 1833, 1842, 1862, 1866, 1870, 1871, 1879 and 1892 of the Social Security Act (42 U.S.C. 1302, 1395g, 1395l, 1395u, 1395y, 1395cc, 1395gg, 1395hh, 1395pp and 1395ccc) and 31 U.S.C. 3711.

■ 2. Section 405.371 is amended by revising paragraph (c)(1) and adding paragraph (e) to read as follows:

§ 405.371 Suspension, offset, and recoupment of Medicare payments to providers and suppliers of services.

* * * * *

(c) * * *

(1) Except as provided in paragraphs (d) and (e) of this section, CMS or the Medicare contractor suspends payments only after it has complied with the

procedural requirements set forth at § 405.372.

* * * * *

(e) *Suspension of payment in the case of unfiled hospice cap determination reports.*

(1) If a provider has failed to timely file an acceptable hospice cap determination report, payment to the provider is immediately suspended in whole or in part until a cap determination report is filed and determined by the Medicare contractor to be acceptable.

(2) In the case of an unfiled hospice cap determination report, the provisions of § 405.372 do not apply. (See § 405.372(a)(2) concerning failure to furnish other information.)

PART 418—HOSPICE CARE

■ 3. The authority citation for part 418 is revised to read as follows:

Authority: Secs. 1102, 1812(a)(5), 1812(d), 1813(a)(4), 1814(a)(7), 1814(i), and 1861(dd) of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 418.3 [Amended]

■ 4. Section 418.3 is amended by removing the definition of ''social worker.''

■ 5. Section 418.24 is amended by—

■ A. Revising paragraph (a).

■ B. Revising paragraph (b)(1).

■ C. Adding a new paragraph (f).

The addition and revisions read as follows:

§ 418.24 Election of hospice care.

(a) *Filing an election statement.* (1) An individual who meets the eligibility requirement of § 418.20 may file an election statement with a particular hospice. If the individual is physically or mentally incapacitated, his or her representative (as defined in § 418.3) may file the election statement.

(2) The hospice chosen by the eligible individual (or his or her representative) must file the Notice of Election with its Medicare claims processing contractor within 3 calendar days after the effective date of the election statement.

(3) Consequences of failure to submit a timely Notice of Election. When a hospice does not file the required Notice of Election for its Medicare patients within 3 calendar days after the effective date of election, Medicare will not cover and pay for days of hospice care from the effective date of election to the date of filing of the NOE. These days are a provider liability, and the provider may not bill the beneficiary for them.

(b) * * *

(1) Identification of the particular hospice and of the attending physician that will provide care to the individual. The individual or representative must acknowledge that the identified attending physician was his or her choice.

* * * * *

(f) *Changing the attending physician.* To change the designated attending physician, the individual (or representative) must file a signed statement with the hospice that states that he or she is changing his or her attending physician.

(1) The statement must identify the new attending physician, and include the date the change is to be effective and the date signed by the individual (or representative).

(2) The individual (or representative) must acknowledge that the change in the attending physician is due to his or her choice.

(3) The effective date of the change in attending physician cannot be prior to the date the statement is signed.

■ 6. Section 418.26 is amended by adding a new paragraph (e) to read as follows:

§ 418.26 Discharge from hospice care.

* * * * *

(e) *Filing a Notice of Termination of Election.* When the hospice election is ended due to discharge, the hospice must file a notice of termination/revocation of election with its Medicare claims processing contractor within 3 calendar days after the effective date of the discharge, unless it has already filed a final claim for that beneficiary.

■ 7. Section 418.28 is amended by adding a new paragraph (d) to read as follows:

§ 418.28 Revoking the election of hospice care.

* * * * *

(d) *Filing a Notice of Revocation of Election.* When the hospice election is ended due to revocation, the hospice must file a notice of termination/revocation of election with its Medicare claims processing contractor within 3 calendar days after the effective date of the revocation, unless it has already filed a final claim for that beneficiary.

■ 8. Section 418.306 is amended by adding paragraph (b)(6) to read as follows:

§ 418.306 Determination of payment rates.

* * * * *

(b) * * *

(6) For FY 2014 and subsequent fiscal years, in the case of a Medicare-certified hospice that does not submit hospice quality data, as specified by the Secretary, the payment rates are equal to the rates for the previous fiscal year increased by the applicable market basket percentage increase, minus 2 percentage points. Any reduction of the percentage change will apply only to the fiscal year involved and will not be taken into account in computing the payment amounts for a subsequent fiscal year.

* * * * *

■ 9. Section 418.308 is amended by revising paragraph (c) to read as follows:

§ 418.308 Limitation on the amount of hospice payments.

* * * * *

(c) The hospice must file its cap determination notice with its Medicare contractor no later than 5 months after the end of the cap year (that is, by March 31st) and remit any overpayment due at that time. The Medicare contractor will notify the hospice of the final determination of program reimbursement in accordance with procedures similar to those described in § 405.1803 of this chapter. If a provider fails to file its self-determined cap determination with its Medicare contractor within 150 days after the cap year, payments to the hospice would be suspended in whole or in part, until a self-determined cap determination is filed with the Medicare contractor, in accordance with§ 405.371(e).

* * * * *

■ 10. Subpart G is amended by adding a new § 418.312 to read as follows:

§ 418.312 Data Submission Requirements Under the Hospice Quality Reporting Program.

General rule. Except as provided in paragraph (f) of this section, Medicare-certified hospices must submit to CMS data on measures selected under section 1814(i)(5)(C)of the Act in a form and manner, and at a time, specified by the Secretary.

(a) *Submission of Hospice Quality Reporting Program data.* Hospices are required to complete and submit an admission Hospice Item Set (HIS) and a discharge HIS for each patient admission to hospice, regardless of payer or patient age. The HIS is a standardized set of items intended to capture patient-level data.

(b) A hospice that receives notice of its CMS certification number before November 1 of the calendar year before the fiscal year for which a payment determination will be made must submit data for the calendar year.

(c) Medicare-certified hospices must contract with CMS-approved vendors to collect the CAHPS® Hospice Survey data on their behalf and submit the data to the Hospice CAHPS® Data Center.

(d) If the hospice's total, annual, unique, survey-eligible, deceased patient count for the prior calendar year is less than 50 patients, the hospice is eligible to be exempt from the CAHPS® Hospice Survey reporting requirements in the current calendar year. In order to qualify for this exemption the hospice must submit to CMS its total, annual, unique, survey-eligible, deceased patient count for the prior calendar year.

(e) Vendors that want to become CMS-approved CAHPS® Hospice Survey vendors must meet the minimum business requirements. Survey vendors must have been in business for a minimum of 4 years, have conducted surveys in the approved survey mode for a minimum of 3 years, and have conducted surveys of individual patients for a minimum of 2 years. For Hospice CAHPS®, a ''survey of individual patients'' is defined as the collection of data from at least 600 individual patients selected by statistical sampling methods, and the data collected are used for statistical purposes. Vendors may not use home-based or virtual interviewers to conduct the CAHPS® Hospice Survey, nor may they conduct any survey administration processes (e.g. mailings) from a residence.

(f) No organization, firm, or business that owns, operates, or provides staffing for a hospice is permitted to administer its own Hospice CAHPS® survey or administer the survey on behalf of any other hospice in the capacity as a Hospice CAHPS® survey vendor. Such organizations will not be approved by CMS as CAHPS® Hospice Survey vendors.

(g) Reconsiderations and appeals of Hospice Quality Reporting Program decisions.

(1) A hospice may request reconsideration of a decision by CMS that the hospice has not met the requirements of the Hospice Quality Reporting Program for a particular reporting period. A hospice must submit a reconsideration request to CMS no later than 30 days from the date identified on the annual payment update notification provided to the hospice.

(2) Reconsideration request submission requirements are available on the CMS Hospice Quality Reporting Web site on CMS.gov.

(3) A hospice that is dissatisfied with a decision made by CMS on its reconsideration request may file an appeal with the Provider Reimbursement Review Board under part 405, subpart R of this chapter.

Dated: April 18, 2014.

Marilyn Tavenner,

Administrator, Centers for Medicare & Medicaid Services.

Approved: April 22, 2014.

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

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Vol. 79, No. 89

Thursday, May 8, 2014

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